192
749458
Supr. Ct.
FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 83

INDEPENDENT WAREHOUSES, INC., PENNSYLVANIA COAL COMPANY, ERIE RAILROAD COMPANY AND JAMES THOMPSON, APPELLANTS,

vs.

WILLIAM SCHEELE, RECORDER OF THE TOWNSHIP OF SADDLE RIVER, AND THE TOWNSHIP OF SADDLE RIVER

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED APRIL 11, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 83

INDEPENDENT WAREHOUSES, INC., PENNSYLVANIA COAL COMPANY, ERIE RAILROAD COMPANY AND JAMES THOMPSON, APPELLANTS,

vs.

WILLIAM SCHEELE, RECORDER OF THE TOWNSHIP OF SADDLE RIVER, AND THE TOWNSHIP OF SADDLE RIVER

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

INDEX

	Original	Print
Record from Supreme Court of New Jersey	1	1
Writ of certiorari—Independent Warehouses, Inc.	1	1
Writ of certiorari—James Thompson	2	1
Order for intervention of Pennsylvania Coal Co. and Erie Railroad Co.	2	2
Return to writ of prosecutor, Independent Warehouses, Inc.	3	2
Summons in Recorder's Court, Saddle River Township	4	3
Warrant and return	6	4
Complaint	7	5
Conviction	9	6
Exhibit "S-1"—Copy of ordinance	13	9
Motion to dismiss complaint	17	12
Return to writ of prosecutor, James Thompson	21	14
Reasons of prosecutors for reversal	22	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 19, 1946.

—6203

	Original	Print
Record from Supreme Court of New Jersey—Continued		
Stipulation for joint record	25	17
Statement of evidence	26	18
Exhibits:		
P-1—Map of Coalberg Storage Plant	26a	18
P-2—Statement of land and improvement assessments, areas, etc.	26	18
P-3—Statement of track areas, etc.	27	19
P-4—Agreement between Pennsylvania Coal Co. and C. E. Denny, et al., July 10, 1939	29	20
P-5—Lease, Pennsylvania Coal Co. to Independent Warehouses, Inc., June 20, 1939	34	24
P-6—Agreement between Pennsylvania Coal Co. and Independent Warehouses, Inc., June 20, 1939	40	28
P-7—Supplement to foregoing agreement, May 24, 1940	46	32
P-8—Agreement between Pennsylvania Coal Co. and Walter Kidde, June 12, 1940	51	36
P-9—Agreement between Susquehanna and Western Railroad Co. and Pennsylvania Coal Co., et al., July 30, 1931	58	40
P-10—Statement of operation of Coalberg Coal Storage Plant, 1941-1943	70	49
P-11—Opinion of General Counsel, Railroad Retirement Board, December 8, 1941 (omitted in printing)	71	
P-12—Joint and proportional tariff I. C. C. No. D-1438	125	55
P-13—Amendment to ordinance	78	50
P-14—Supplement to ordinance	81	52
D-1—List of prices of coal	83	53
D-2 and D-3—Maps (omitted in printing)	82	
D-4—Excerpts from record from D. C. U. S., District of New Jersey, Case No. 2861 (omitted in printing)	84	
P-16—Protest against ordinance	126	59
P-17—Statement of coal in storage at Coalberg Storage Plant by sizes, etc., 1942-1944	127	60
P-18—List of maximum prices established for anthracite coal	128	61
Depositions	129	61
Caption and appearances	129	61
Colloquy	129	61
Witnesses for prosecutors:		
Francis J. Brust:		
Direct	155, 166	64, 73
Cross	156, 167	65, 74
Redirect	162, 164	70, 72
Recross	163	70

Record from Supreme Court of New Jersey—Continued
Statement of evidence—Continued
Depositions—Continued
Witnesses for prosecutors—Continued
Fred V. Lynn:
Direct 168 75
Cross 170 77
Roy W. Radcliffe:
Direct 172 79
Cross 187 90
David D. Jamieson:
Direct 209 108
Cross 217 114
Thomas J. Snyder:
Direct 230 125
Cross 232 127
Redirect 238 133
John T. McCormack:
Direct 240, 259 133, 139
Cross 248, 260 140, 150
James Thompson:
Direct 261 151
Cross 263 153
Redirect 268, 277, 279 157
Recross 272 160
Witnesses for defendant:
Frank J. Fox:
Direct 283 169
Cross 287 172
Condito Belli:
Direct 302 185
Cross 307 190
Frank E. Harley:
Direct 324 203
Cross 342 217
Opinion, Porter, J. 387 253
Rule reversing judgment of the Recorder of the Township of Saddle River, N. J. (Independent) 393 257
Notice of appeal (Independent) 395 258
Acknowledgments of service 396 258
Grounds of appeal (Independent) 398 259
Acknowledgments of service 401 261
Rule for judgment (Thompson) 403 261
Notice of appeal (Thompson) 404 262

	Original	Print
Record from Supreme Court of New Jersey—Continued		
Acknowledgment of service	405	262
Grounds of appeal (Thompson)	406	263
Acknowledgment of service	408	264
Proceedings in Court of Errors and Appeals of New Jersey	409	265
Opinion, Heher, J.	409	265
Order of reversal and remittitur (Independent)	421	275
Order of reversal and remittitur (Thompson)	423	276
Petition for appeal	425	276
Order allowing appeal	430	280
Supersedeas bond on appeal (Independent) (omitted in printing)	433	
Supersedeas bond on appeal (Thompson) (omitted in printing)	444	
Assignments of error	452	281
Citation and service (omitted in printing)	459	
Praecipe for transcript of record	462	286
Clerk's certificate (omitted in printing)	465	
Statement of points to be relied upon and designation of record	466	287
Order noting probable jurisdiction	472	289

[fol. 1] **IN SUPREME COURT OF NEW JERSEY**

WRIT OF CERTIORARI

Allowed and Filed December 13, 1943

(L. S.)

New Jersey, ss.: THE STATE OF NEW JERSEY TO: WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a municipal corporation of the State of New Jersey—Greeting:

We being willing, for certain reasons, to be certified of the judgment of conviction rendered by you William Scheele, Recorder of the Township of Saddle River, on or about November 30, 1943, in proceedings against Independent Warehouses, Inc., a corporation of the State of New York, for violation of Section 1 of an ordinance of said Township entitled "An Ordinance to regulate and license the business of the storage of personal property in warehouses engaged in the business of storing goods for hire and the place or premises in or at which said business is conducted and carried on, to prescribe fees for said licenses, and to provide penalties for the violation of this ordinance," and the penalty imposed thereon, and the ordinance upon which said proceedings are based, do command you that you, and each of you, send, under your respective seals, to the Justices of our Supreme Court at Trenton, on the 31st day of December, 1943, the said judgment, proceedings and penalty imposed and the ordinance upon which they are based, together with all things touching and concerning the same, as fully as they remain before you and each of you, together with this Writ, that we may cause to be done thereupon what of right and according to law ought to be done.

[fol. 2] Witness, Thomas J. Brogan, Esquire, Chief Justice of our said Supreme Court, at Trenton, the 13th day of December, One Thousand, Nine Hundred and Forty-three.

James J. Gavin, Clerk.

Collins & Corbin, Attorneys.

A similar writ was allowed and filed the same day in favor of James Thompson, as prosecutor.

IN SUPREME COURT OF NEW JERSEY

ORDER FOR INTERVENTION—Filed December 14, 1943

This matter being opened to the court by Hobart, Minard & Cooper, attorneys for Pennsylvania Coal Company, and Erie Railroad Company, and it appearing that a writ of certiorari allowed in the above entitled action involves the validity of an ordinance adopted January 25, 1943, by the Township of Saddle River, and it further appearing from their verified petition presented on this date, that a decision of this court upon said writ may affect adversely the interests of said Pennsylvania Coal Company and Erie Railroad Company, and upon good cause being shown, it is on this 13th day of December, 1943,

Ordered that Pennsylvania Coal Company and Erie Railroad Company, be, and they are hereby, made parties to this action on the side of the prosecutor, and it is further

Ordered that their names be added to the writ of certiorari allowed herein and that they, and each of them, be [fol. 3] given notice of all further proceedings herein to be had in accordance with the practice, and the rules, of this court, and it is further

Ordered that they, and each of them, may, on notice, take depositions under said writ, in accordance with the statute in such case made and provided and in accordance with the rules of this court, which depositions shall constitute a part of the record before this court upon the consideration of said writ of certiorari.

Joseph L. Bodine, Supreme Court Justice.

IN SUPREME COURT OF NEW JERSEY

RETURN TO WRIT OF PROSECUTOR, INDEPENDENT WAREHOUSES, INC.—Filed December 30, 1943

To the Honorable Justices of the Supreme Court of Judicature of New Jersey:

In obedience to the command of the writ directed to William Scheele, Recorder of the Township of Saddle River, and the Township of Saddle River, a municipal corporation of the State of New Jersey, I hereby certify and send under

my seal to the Supreme Court of Judicature of New Jersey the judgment of conviction rendered by me on or about November 30th, 1943, in proceedings against Independent Warehouses, Inc. for violation of Section 1 of an ordinance of the Township of Saddle River entitled "An Ordinance to Regulate and License the Business of the Storage of Per- [fol. 4] sonal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which Said Business is Conducted and Carried On, to Prescribe Fees for Such Licenses, and to Provide Penalties for the Violation of this Ordinance," and the penalty imposed thereon, and the ordinance upon which said proceedings are based, together with all matters appertaining thereto as fully and entirely as before me and the Township of Saddle River they remain.

In Witness Whereof, I, William Scheele, Recorder of the Township of Saddle River, have hereunto set my hand and seal at the Township of Saddle River, New Jersey, this 29th day of December, 1943.

—— —— (L. S.) William Scheele, Recorder of the Township of Saddle River. (Seal.)

SUMMONS

RECORDER'S COURT, SADDLE RIVER TOWNSHIP

STATE OF NEW JERSEY,
Saddle River Township,
County of Bergen, ss:

To Independent Warehouses, Inc.
Address Coalberg, Saddle River Township, Bergen County, N. J.

[fol. 5] Complaint has been made this day by one Charles Imperato, Chief of Police, that you did on the 12th day of April A. D. 1943, in the Saddle River Township, violate Sec. 1 of Ordinance entitled "An Ordinance to Regulate and License the Business of the Storage of Personal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which said Business is Conducted and Carried On, to Prescribe Fees for Such Licenses and to Provide Penalties for the Violation of this Ordinance."

You are hereby Summoned to appear Personally before the Recorder of Saddle River Township, at the Township Recorder's Court, Municipal Building, Township aforesaid, on the 20th day of April A. D. 1943, at 8 o'clock P. M., to answer to the said complaint and to be further dealt with according to law.

Witness William Scheele, Esquire, Recorder of the Recorder's Court, Saddle River Township, this 15th day of April 1943.

William Scheele, Clerk to Recorder.

NOTE: Failure to Appear Will Result in the Issuance of a Warrant for Your Arrest: Bring This Summons and Also Your Witnesses, If Any, With You.

[fol. 6]

WARRANT

RECORDER'S COURT, TOWNSHIP OF SADDLE RIVER, COUNTY OF BERGEN, STATE OF NEW JERSEY

Whereas, complaint hath this day been made to me, on oath by Charles Imperato, Chief of Police, that on the 12th day of April, A. D. One Thousand Nine Hundred and Forty-three at Coaiberg, in the Township of Saddle River, in the County of Bergen, one Independent Warehouses, Inc., a corporation conducted or carried on the business of the storage of personal property in a warehouse engaged in storing goods for hire without there having been granted by the Township Committee of the Township of Saddle River a license, which was then and there in force and effect, to conduct said business for the place and premises at which said business was then and there conducted and carried on. All of which was contrary to and in violation of Sec. 1 of an ordinance of the Township of Saddle River aforesaid, entitled "An Ordinance to Regulate and License the Business of the Storage of Personal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which said Business is conducted and Carried On, to Prescribe Fees for Such Licenses, and to Provide Penalties for the Violation of this Ordinance."

These are, therefore, in the name of the State of New Jersey, to authorize and require you to apprehend the said

Independent Warehouses, Inc., if in your county it may be found, and bring it forthwith before me, Recorder of the Recorder's Court of the Township of Saddle River, of [fol. 7] the County of Bergen in and for said Township, to answer the said complaint, and be further dealt with as the law directs; hereof you are not to fail; and for so doing this shall be your warrant.

Given under my hand and seal, at my office in the Township of Saddle River, this 15th day of April, 1943.

William Scheele, Recorder, Township of Saddle River, of the County of Bergen.

I return the within Warrant with defendant, into Court, this 30th day of November, 1943.

Charles Imperato, Chief of Police.

COMPLAINT

RECORDER'S COURT, TOWNSHIP OF SADDLE RIVER, COUNTY OF BERGEN, STATE OF NEW JERSEY

STATE OF NEW JERSEY,
County of Bergen, ss:

Before me, William Scheele, Recorder of the Township of Saddle River, personally appeared Charles Imperato, Chief of Police of Township of Saddle River, who being duly sworn according to law, deposeth and saith that on the 12th day of April, 1943, between the hours of 8 and 10 A. M., at the Township of Saddle River aforesaid on Assessment [fol. 8] Map shown as Block 106-D, commonly called Coalberg, one Independent Warehouses, Inc., a corporation, conducted or carried on the business of the storage of personal property in a warehouse engaged in storing goods for hire without there having been granted by the Township Committee of the Township of Saddle River a license, which was then and there in force and effect, to conduct said business for the place and premises at which said business was then and there conducted and carried on.

All of which was contrary to and in violation of Sec. 1 of an ordinance of the Township of Saddle River aforesaid, entitled "An Ordinance to Regulate and License the Business of the Storage of Personal Property in Warehouses

Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which said Business is Conducted and Carried on, to Prescribe Fees for Such License, and to Provide Penalties for the Violation of this Ordinance." Introduced January 13th, 1943 and adopted January 25th, 1943.

Therefore, this complainant prays that the said Independent Warehouses, Inc., may be apprehended and held to answer said complaint, and dealt with as Law and Justice may require.

Charles Imperato, Complainant; William Scheele, Presiding Judge.

Subscribed and sworn to before me this 15th day of April, A. D. 1943. William Scheele, Recorder.

[fol. 9] CONVICTION

RECORDER'S COURT, SADDLE RIVER TOWNSHIP

STATE OF NEW JERSEY,
County of Bergen, ss:

Be it remembered that on the 30th day of November, 1943, Independent Warehouses, Inc., a corporation, was brought before me, William Scheele, Recorder of the Township of Saddle River in the County of Bergen, charged with having on April 12th, 1943, in the Township of Saddle River aforesaid at the certain place called Coalberg, appearing on the Assessment Map as Block No. 106-D, conducted or carried on the storage of personal property in a warehouse engaged in the business of storing goods for hire without there having been granted by the Township Committee of the Township of Saddle River a license, which was then and there in force and effect, to conduct said business for the place and premises in or at which said business was conducted and carried on, in violation of Section 1 of an ordinance of the Township of Saddle River entitled "An Ordinance to Regulate and License the Business of the Storage of Personal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which said Business is Conducted and Carried On; to Pre-

scribe Fees for Such Licenses, and to Provide Penalties for the Violation of this Ordinance," adopted January 25th, 1943.

The defendant, Independent Warehouses, Inc., having first entered a plea of not guilty, was placed upon trial on the charge made against it as aforesaid.

[fol. 10] Candido Belli, Deputy Township Clerk, having been first duly sworn, identified an ordinance entitled "An Ordinance to Regulate and License the Business of the Storage of Personal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which said Business is Conducted and Carried On, to Prescribe Fees for Such Licenses, and to Provide Penalties for the Violation of this Ordinance," as having been duly adopted on January 25th, 1943, by the Township of Saddle River and having been advertised on January 29th, 1943, which ordinance was offered and received in evidence and marked Exhibit S-1. The Deputy Clerk further testified that no license had been issued to Independent Warehouses, Inc. or to any other person to operate a business at the premises known as Coalberg appearing as Block No. 106-D on the Assessment Map of the Township of Saddle River.

James Thompson having been called as a witness and being duly sworn identified his testimony in the matter of Independent Warehouses, Inc. against Township of Saddle River on certiorari in the New Jersey Supreme Court. He further testified that he was an employee of the defendant, Independent Warehouses, Inc., was so employed during the Month of April, 1943, and that during said month the defendant, Independent Warehouses, Inc., was operating the business of the storage of coal in a warehouse engaged in storing goods for hire within the Township of Saddle River at the place known as Coalberg, whereupon the Attorney of the defendant, Independent Warehouses, Inc., stipulated in open Court that said defendant, Independent Warehouses, Inc., conceded that it was operating a busi-[fol. 11] ness at the time and place charged in the complaint in violation of the ordinance referred to therein, if such ordinance was legal and valid.

Counsel for Independent Warehouses, Inc. having been afforded an opportunity to cross examine the witnesses called on behalf of the State and the State having rested its

case against the defendant, defendant called upon its own behalf John F. McCormick who, having been first duly sworn, testified that he was the President of the defendant, Independent Warehouses, Inc. that they were operating a public warehouse for the storage of coal on the date charged in the complaint and that they had never applied for any license therefor under the ordinance referred to in the complaint. He further testified that the area of their operations consisted of 67¼ acres; that Pennsylvania Coal Company owned the land and that they paid rent of $1.00 a year; that they stored coal for the Pennsylvania Coal Company to an amount of about 200,000 tons a year for which they received $800.00 a year; that they have no other income from this yard except this $800.00. On cross examination the witness reaffirmed that the total income of the Company from the yard was only $800.00 a year. He admitted that James Thompson was an employee of Independent Warehouses, Inc. and when questioned as to how his salary was paid out of $800.00 a year he testified that Independent Warehouses, Inc. have other storage yards and the losses from this yard must be charged up against them but was not sure; when questioned as to where they were he testified that he could not say offhand and would have to get the information. He later testified that there were twenty-three employees at the yard in Saddle River and when asked how these salaries [fol. 12] were paid he said he thought they were paid by the Pennsylvania Coal Company. The witness was unable to explain what method of charging was used for the storage of the coal. When questioned as to what the defendant would charge for the storage of five tons he testified that the charge would be $200.00, and when it was explained to him that that would be a charge of $40.00 a ton he said that they had a minimum charge of $200.00, although later he testified that the charge to Pennsylvania Coal Company was a minimum of $500.00 and a maximum of $800.00 per annum. The witness described the operation of his Company as being what is known as a field warehousing arrangement which he admitted was a device to avoid the payment of taxes.

The defendant rested and counsel for the defendant moved for the dismissal of the complaint on the ground that the ordinance referred to in the complaint was not a valid exercise of the licensing power of the Township, that the

license fee would be greatly in excess of the total annual earnings of the defendant and that the ordinance interfered with interstate commerce. The motion of the defendant was denied.

Wherefore, I, the said Recorder of the Township of Saddle River, hereby find the defendant, Independent Warehouses, Inc. guilty as charged in the complaint and impose upon it a fine of $200.00. There may issue execution against the goods and chattels of the said defendant, Independent Warehouses, Inc. to be levied and enforced in the same manner as are executions from the Small Cause Court.

William Scheele, Recorder. (L. S.)

[fol. 13] EXHIBIT S-1

TOWNSHIP OF SADDLE RIVER, BERGEN COUNTY

Notice

An ordinance to regulate and license the business of the storage of personal property in warehouses engaged in the business of storing goods for hire and the place or premises in or at which said business is conducted and carried on, to prescribe fees for such licenses, and to provide penalties for the violation of this ordinance.

Be it ordained by the Township Committee of the Township of Saddle River, in the County of Bergen:

1. Within the limits of the Township of Saddle River, no person, firm or corporation shall conduct or carry on the business of the storage of personal property in a warehouse engaged in storing goods for hire or work in, occupy, or, directly, or indirectly in any manner whatsoever, utilize any place or premises in which is conducted or carried on the storage of personal property in a warehouse engaged in the business of storing goods for hire, unless and until there shall be granted by the Township Committee of the Township of Saddle River in accordance with the terms of this ordinance, and shall be in force and effect, a license to conduct said business for the place and premises in or at which said business shall be conducted and carried on.

[fol. 14] 2. Said license shall be applied for by written application filed with the Township Committee. Such application shall set forth the full name and address of the applicant, the kind or character of personal property to be stored, the location of the place and premises in or at which the business is to be conducted, the total area of the ground space thereof and a diagram of the same. Said application shall also be accompanied with a deposit to cover the license fee for the current year in the amount hereinafter provided.

3. There shall be charged and collected for said license an annual fee to be computed on the basis or rate of three-quarters of a cent (¾ of 1¢) for each square foot of the total ground area of the place and premises in the Township of Saddle River in or at which said business is conducted or carried on. Said license shall expire on January first of each year. Said license fee shall be payable in advance for each year or part thereof and is hereby expressly declared to be imposed for revenue. The Township Committee may revoke any such license for sufficient cause after notice and hearing.

4. If perishable goods are stored at said licensed premises, said place or premises and the manner and conduct of said business shall in all respects comply with any and all health regulations required by any Federal, State or Municipal health authority.

5. Such licensed place or premises shall at all times comply with all proper police and fire regulations imposed by the Township Police and Fire authorities.

[fol. 15] 6. Said business and the place and premises where conducted shall be subject to reasonable inspection by the Police, Fire and Health authorities of the Township of Saddle River. It shall be the duty of the Chief of the Fire Department to immediately report in writing to the Township Committee the storage of any inflammable or combustible matter in or at any place or premises licensed hereunder. Said report shall also include the specific character and quantities of such material.

7. Any person, firm or corporation who shall violate any term or provision of this ordinance shall upon conviction thereof be subject to imprisonment in the County Jail or in

any place provided by the Township of Saddle River for the detention of prisoners, for a term not exceeding ninety (90) days or to a fine not exceeding Two Hundred Dollars ($200.00), or both. Any person so convicted may, in the discretion of the Magistrate by whom he was convicted, in default of the payment of any fine be imprisoned in the County Jail or place of detention provided by the Township of Saddle River, for any term not exceeding ninety (90) days. There may issue out of the court of any Magistrate empowered to impose fines for the violation of this ordinance execution against the goods and chattels of any person, firm or corporation convicted in such court or before such Magistrate. Execution shall be levied and enforced in the same manner as are executions from the small cause court. Each day that a violation of any of the terms or provisions of this ordinance shall continue shall constitute a separate offense.

[fol. 16] 8. In the event that any section or part of this ordinance shall be held illegal or unconstitutional such invalidity shall not be construed as impairing the force and effect of the remainder of the ordinance.

9. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to such inconsistent provisions and this ordinance shall take effect after publication in the manner provided by law.

[fol. 17] MOTION TO DISMISS COMPLAINT

RECORDER'S COURT

TOWNSHIP OF SADDLE RIVER

BERGEN COUNTY, NEW JERSEY

On Complaints for violation of ordinance entitled "An Ordinance to regulate and license the business of the storage of personal property in warehouses engaged in the business of storing goods for hire and the place or premises in or at which said business is conducted and carried on, to prescribe fees for such licenses, and to provide penalties for the Violation of this Ordinance."

CHARLES IMPERATO, Chief of Police of the Township of Saddle River, Bergen County, Complainant

vs.

INDEPENDENT WAREHOUSES, INC., a corporation of the State of New York, Defendant

CHARLES IMPERATO, Chief of Police of the Township of Saddle River, Bergen County, Complainant,

vs.

JAMES THOMPSON, Defendant.

The defendant, Independent Warehouses, Inc., a corporation of the State of New York, moves to dismiss the complaint against it on the following grounds:

1. The ordinance upon which the complaint is based is not [fol. 18] a valid exercise of any licensing power of the Township of Saddle River, but is a devise to obtain public revenue from the storage of coal in the Township in a particular instance, in lieu of personal taxes on the coal stored which is exempted from taxation by law.

2. The total ground area of the place and premises in the Township of Saddle River in or at which Independent Warehouses, Inc. conducts or carries on the business of storing coal for hire, is 67.25 acres or 2,929,410 square feet and the annual license fee required to be paid by that com-

pany, computed on that area at the rate of three-quarters of a cent for each square foot, as prescribed by said ordinance, amounts to over $20,000. Such license fee is greatly in excess of any total annual earnings that Independent Warehouses, Inc. could obtain from the business of the storage of coal on said premises, and the annual license fee is arbitrary, unreasonable, prohibitory and confiscatory.

3. The business of storing coal for hire by Independent Warehouses, Inc. at the above mentioned place or premises in the Township of Saddle River, consists of the storage of coal shipped from coal mines outside of the State of New Jersey over the railroad of the Erie Railroad Company, an interstate carrier by steam railroad, under joint tariffs filed by it and other railroad companies with the Interstate Commerce Commission of the United States, which provide for the transportation of the coal to and from the above mentioned coal storage plant used by Independent Warehouses, Inc., for the purpose of its business, under through rates from the point of origin of the shipment to the ulti- [fol. 19] mate destination of the coal, the handling of the coal into and out of the coal storage plant and for storage of the coal therein. The coal stored at said coal storage plant is in the course of transportation in interstate commerce. The license fee required by the aforesaid licensing ordinance of the Township of Saddle River is unreasonable, arbitrary and prohibitory and imposes taxes, regulations, restrictions and burdens upon interstate commerce.

4. Said ordinance purports to be for the purpose of licensing the business of storing personal property for hire in the Township of Saddle River, but erroneously imposes penalties upon persons, firms and corporations who work in, occupy or, directly, or indirectly in any manner whatsoever utilize any place or premises in which such business is carried on unless and until a license under the ordinance has been granted by the Township, notwithstanding such persons, firms and corporations are not engaged in conducting or carrying on the business and are not responsible therefor.

5. The ordinance was passed by the Township Committee of the Township of Saddle River on January 25, 1943, and provides for an annual license fee, payable in advance and that the license shall expire on January first of each

year. Therefore, no license is required by the ordinance for any period prior to January 1, 1944.

6. Said ordinance deprives Independent Warehouses, Inc. of its property without due process of law and denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Constittuion of the United States, [fol. 20] and imposes taxes, regulations, restrictions and burdens upon interstate commerce in violation of the commerce clause of the Constitution of the United States and the acts of Congress to regulate commerce.

7. Said ordinance is, for the reasons above stated, or one or more of them, and in other respects, irregular, defective, unlawful, unconstitutional and illegal.

The defendant James Thompson moves to dismiss the complaint against him on the grounds above stated and on the further ground that on the date mentioned in the complaint he was not responsible for conducting or carrying on the business of the storage of personal property in a warehouse for hire in the Township of Saddle River and can not be lawfully charged with a violation of the aforesaid licensing ordinance of the Township.

Dated November 30, 1943.

Collins & Corbin, Attorneys for and of Counsel with Independent Warehouses, Inc. and James Thompson, Defendants.

[fol. 21] IN SUPREME COURT OF NEW JERSEY

RETURN TO WRIT OF PROSECUTOR, JAMES THOMPSON—Filed December 30, 1943

The Return to the writ allowed the Prosecutor James Thompson, is the same except that:

(a) His violation is alleged to have occurred, and he was convicted for violation, on April 14, 1943.

(b) He is alleged to have "worked in, occupied or utilized" said place or premises, namely Block 106-D, and was convicted accordingly.

(c) His certificate of "conviction" contains the following stipulation:

> "Counsel for defendant stipulated that the evidence adduced in the trial on the same date herewith of the complaint against Independent Warehouses, Inc. together with the same objections and motions should comprise the evidence on the trial of the defendant, James Thompson."

(d) The Recorder stated that in default of the payment of the fine, Thompson "shall be imprisoned in the County Jail for a term of ninety *days* (90) days" instead of providing that execution against the goods and chattels might issue.

[fol. 22] IN SUPREME COURT OF NEW JERSEY

REASONS OF PROSECUTORS—Filed January 10, 1944

The prosecutors, and each of them, present the following reasons for reversing and setting aside the proceedings and judgments of conviction brought before this honorable court by the writ of certiorari in the above entitled cause:

1. The proceedings and judgments of conviction are based upon an alleged violation by the prosecutors, Independent Warehouses, Inc., and James Thompson, respectively, of an ordinance of the defendant, Township of Saddle River, entitled "An Ordinance to regulate and license the business of the storage of personal property in warehouses engaged in the business of storing goods for hire and the place or premises in or at which said business is conducted and carried on, to prescribe fees for said licenses, and to provide penalties for the violation of this ordinance," which ordinance is invalid, unlawful, unconstitutional and illegal, in this instance, because

> (a) The ordinance is not a valid exercise by the Township of Saddle River of any licensing power or authority it may have, but is a device of the Township to obtain public revenue from the prosecutors, or one or some of them, in lieu of personal taxes on certain coal stored in the Township which is exempted by law from taxation.

(b) The license fee prescribed by the ordinance is arbitrary, unreasonable and prohibitory and deprives the prosecutors, and each of them, of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, and the Constitution and laws of New Jersey.

[fol. 23] (c) The ordinance, in effect, provides for a tax upon the property of the prosecutors, and each of them, and denies them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

(d) The ordinance requires the obtaining of a license and the prepayment of license fee as a condition precedent to the right of prosecutors, or one or some of them, to conduct an instrument of transportation service in interstate commerce, in violation of the Commerce Clause of the Constitution of the United States and the Act of Congress to regulate commerce.

(e) The ordinance imposes taxes, regulations, instructions and burdens upon interstate commerce in violation of the Commerce Clause of the Constitution of the United States and the Act of Congress to regulate commerce.

(f) The ordinance takes the private property of the prosecutors, and each of them, for public use without just compensation, in violation of Article I, paragraph 16 of the Constitution of the State of New Jersey.

(g) The ordinance imposes excessive fines and penalties and inflicts unusual punishments, in violation of Article I, paragraph 15, of the Constitution of the State of New Jersey.

(h) The ordinance, in effect, imposes a tax upon property in violation of Article IV, Section VII, paragraph 12 of the Constitution of the State of New Jersey, [fol. 24] which provides that property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

(i) The ordinance is unreasonable and invalid because it confers discretionary power in the governing body of the Township of Saddle River to grant or re-

voke licenses without specifying uniform rules and regulations to apply to all applicants or licensees.

(j) The ordinance is not within any licensing power of the Township of Saddle River or authorized by law.

(k) The ordinance denies to prosecutors and each of them, the enjoyment of liberty, to acquire and possess property, and to pursue and obtain safety and happiness, in violation of the Constitution and laws of New Jersey.

(l) The ordinance denies to prosecutors and each of them, their privileges and immunities as citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

(m) The ordinance is indefinite and uncertain among other things, as to the amount of license fees and fines and penalties for violations of the ordinance.

(n) The ordinance was passed by the Township Committee of the Township of Saddle River on January 25, 1943, and provides for an annual license fee, payable in advance and that the license shall expire on January first of each year. No license is required by the ordinance for any period prior to January 1, 1944.

[fol. 25] 2. The ordinance, proceedings and judgments of conviction and the statutes upon which they are based, are for the reasons above stated, or one or more of them, and in other respects, invalid, unlawful, unconstitutional and illegal.

Collins & Corbin, Attorneys of Prosecutors, Independent Warehouses, Inc. and James Thompson, Hobart, Minard & Cooper, Attorneys of Prosecutor, Pennsylvania Coal Company and Erie Railroad Company.

IN SUPREME COURT OF NEW JERSEY

STIPULATION FOR JOINT RECORD—Filed April 22, 1944

It is hereby stipulated that the proceeding on the writs of certiorari in the above entitled cases, respectively, be

presented to the court in one joint record, and that, with the court's approval, they be briefed and heard together.

Signed by attorneys for all prosecutors and defendants March 22, 1944.

[fol. 26] IN SUPREME COURT OF NEW JERSEY

Statement of Evidence

EXHIBIT P-2.

Coalberg Licensing Ordinance — March 17, 1944

Coalberg Storage Plant (67.25 acres) 1943
Land and Improvement Assessments, Areas, Uses and Taxes

(1) Area Sq. Ft. Land	(2) Rate per Sq. Ft. Land	Assessed Valuation (3) Total Land	Occupancy and Use—Sq. Ft. of Land (4) Railroad Tracks	(5) Storage Plant	(6) Unoccupied	(7) License Fee ¾¢ Sq. Ft.
		*Block 106–D (containing all tracks and improvements).				
1,365,148	1¢	$13,651	462,350	1,198,500	1,068,750	$20,475 00
1,365,148	½¢	6,824				
Improvements		$113,400				
			Block 106–E			
90,910	½¢	455			90 910	682 50
			Block 102, Lot 1			
108,900	¾¢	817			108,900	817 00
2,929,410 (Land)		$21,747	462,350	1,198,500	1,268,560	$21,974 50
(Improvements)		113,400				
(Total)		$135,147				
Taxes levied		7,770 98				

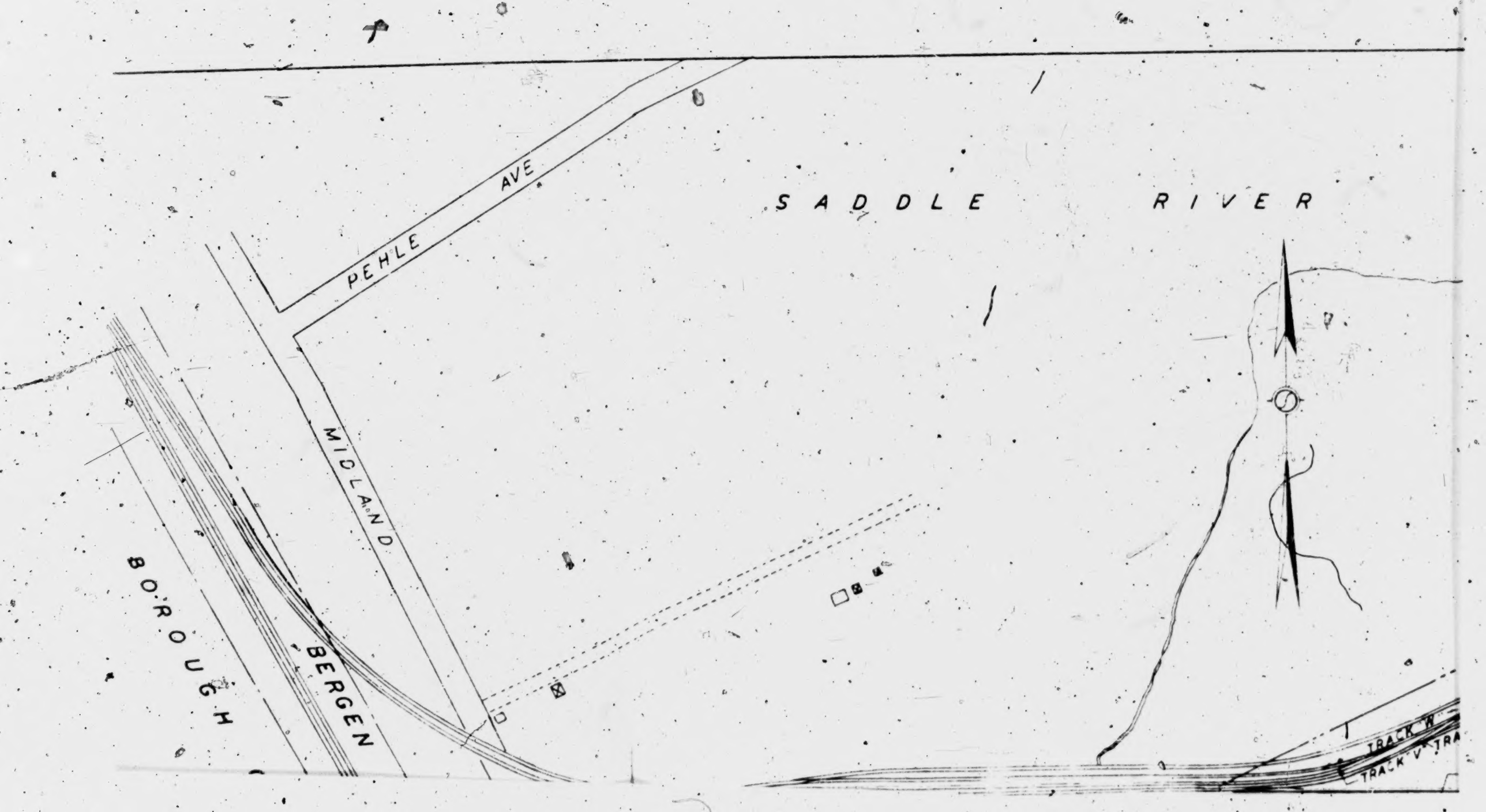
* Complaint designation of place of violation of Ordinance.

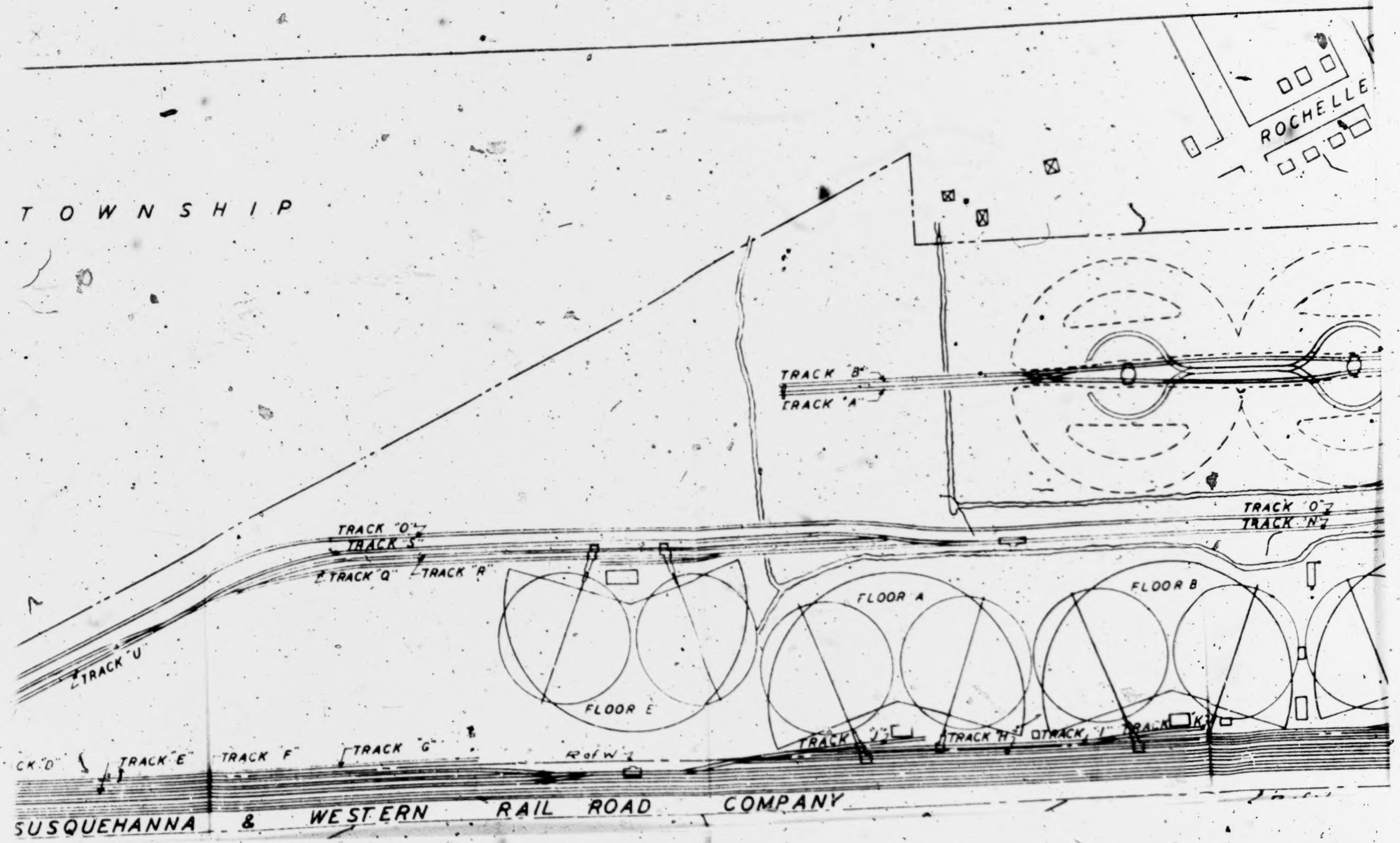
Land Distribution of Track Occupancy (all in Blk. 106–D)

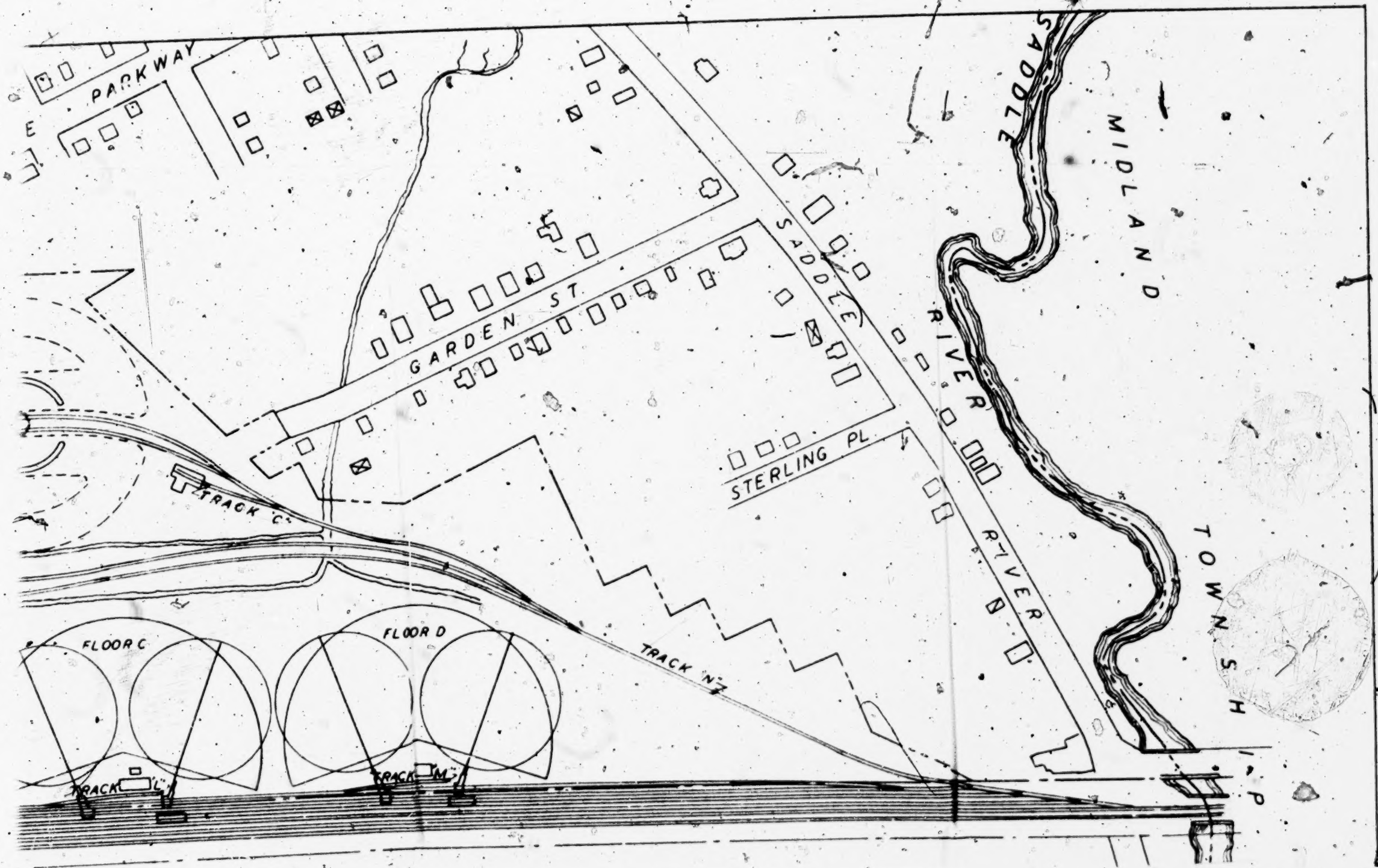
Use	(1) Sq. Ft. Area	(2) Lineal Feet	(3) License Fee ¾c. Sq. Ft.
Storage Plant (Primary)	107,240	5,047	$804.30
N. Y. S. & W. Railroad Exclusive	188,055	7,525	1,410.41
Joint—Plant & N. Y. S. & W.	167,055	9,060	1,252.91
N. Y. S. & W. Over-all Trackage Rights			
	462,350	21,632	$3,467.62

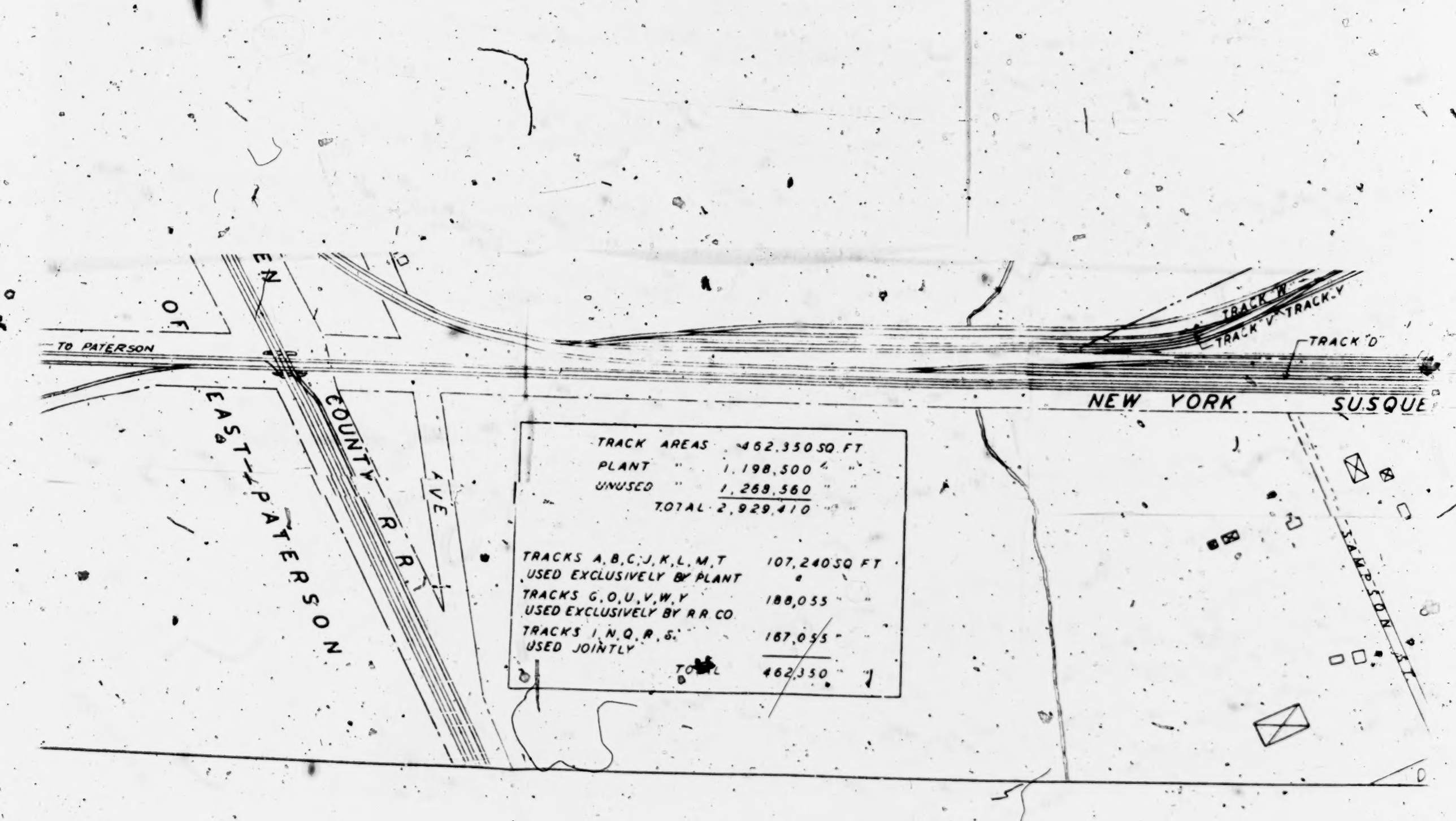
F. J. Brust.

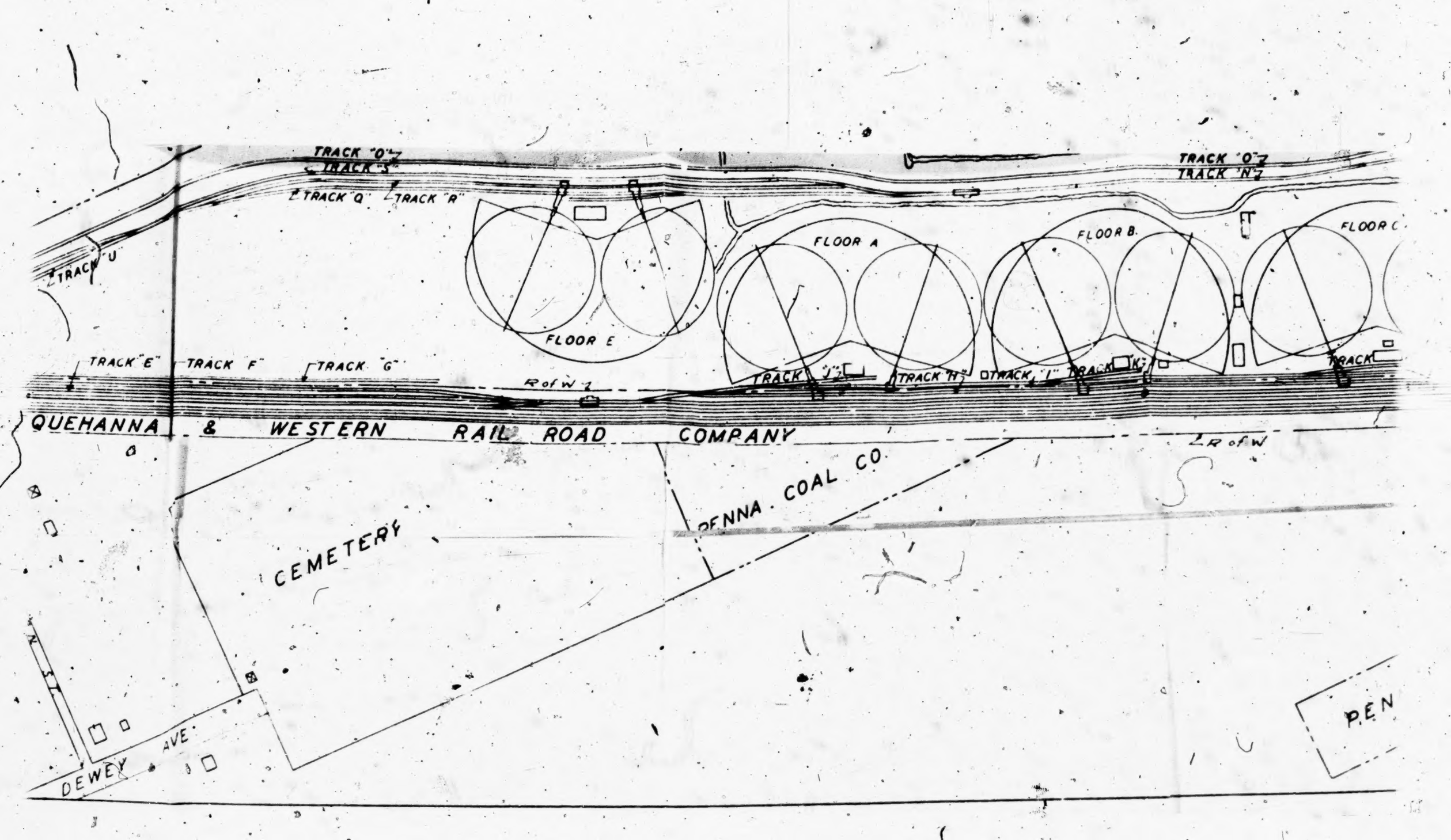
(Here follows 1 photolithograph, side folio 26a)


PEHLE AVE
MIDLAND
BERGEN
BOROUGH
SADDLE RIVER
TRACK W
TRACK V


ROCHELLE
TOWNSHIP
TRACK "B"
TRACK "A"
TRACK "O"
TRACK "S"
TRACK "Q"
TRACK "R"
TRACK "N"
TRACK "U"
FLOOR A
FLOOR B
FLOOR E
TRACK "D"
TRACK "E"
TRACK "F"
TRACK "G"
R of W
TRACK "J"
TRACK "H"
TRACK "I"
TRACK "K"
SUSQUEHANNA & WESTERN RAIL ROAD COMPANY


E. PARKWAY
GARDEN ST
SADDLE
STERLING PL
RIVER
RIVER
SADDLE
MIDLAND
TOWNSHIP
TRACK 'C'
TRACK 'N'
FLOOR C
FLOOR D
TRACK 'L'
TRACK 'M'


TO PATERSON
EAST PATERSON
COUNTY R.R.
AVE
TRACK W
TRACK V
TRACK Y
TRACK "D"
NEW YORK
SUSQUE
SAMPSON AVE
TRACK AREAS 462,350 SQ FT
PLANT " 1,198,500 " "
UNUSED " 1,268,560 " "
TOTAL 2,929,410 " "
TRACKS A,B,C,J,K,L,M,T USED EXCLUSIVELY BY PLANT 107,240 SQ FT
TRACKS G,O,U,V,W,Y USED EXCLUSIVELY BY R R CO 188,055 " "
TRACKS I,N,Q,R,S, USED JOINTLY 167,055 " "
TOTAL 462,350 " "


TRACK "O"
TRACK "S"
TRACK "Q"
TRACK "R"
TRACK "O"
TRACK "N"
TRACK "U"
FLOOR E
FLOOR A
FLOOR B.
FLOOR C
TRACK "E"
TRACK F"
TRACK "G"
R of W
TRACK "J"
TRACK "H"
TRACK "I"
TRACK "K"
TRACK
QUEHANNA & WESTERN RAIL ROAD COMPANY
L R of W
QUEHANNA COAL CO
CEMETERY
DEWEY AVE
P.E.N

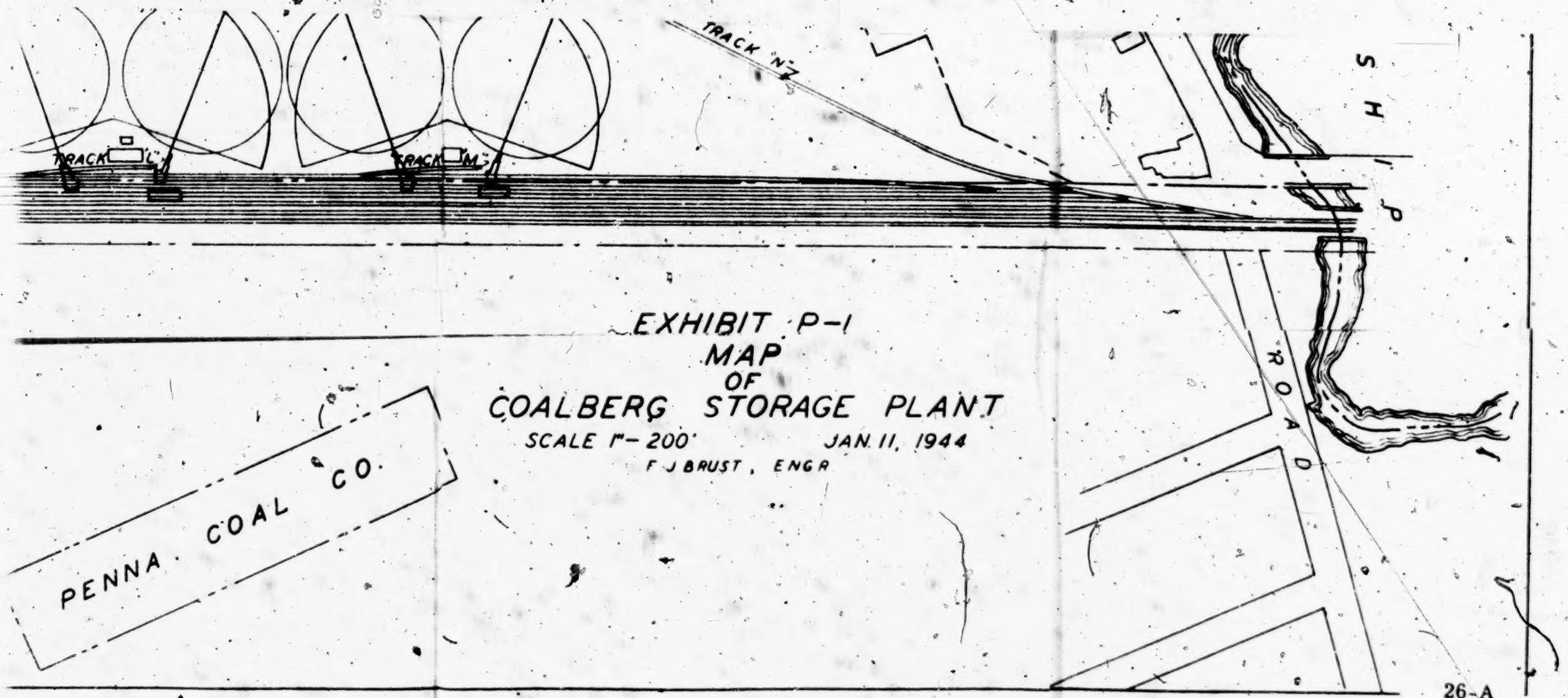


EXHIBIT P-1
MAP
OF
COALBERG STORAGE PLANT
SCALE 1"-200' JAN. 11, 1944
F. J. BRUST, ENGR

{fol. 27}

EXHIBIT P-3

Coalberg, N. J. 1/6/44

Track Areas

Tracks used by Storage Plant: "A", "B" and "C".			88,600 Sq. ft.
	550′ x 47′ — 25,850		
	500′ x 60′ — 30,000		
	355′ x 50′ — 17,750		
	300′ x 20′ — 6,000		
	300′ x 30′ — 9,000		
	2005′	88,600	
Track "J"		270′ x 12′	3,240 "
" "K"		250′ x 12′	3,000 "
" "L"		250′ x 12′	3,000 "
" "M"		250′ x 12′	3,000 "
" "T"		320′ x 20′	6,400 "
		Total	107,240 "
Tracks used exclusively by N. Y. S. & W. Railroad Co.:			
Track "G"		1360′ x 25′	34,000 "
" "O"		3990′ x 30′	119,700 "
" "U"		510′ x 18′	9,180 "
" "V"		395′ x 10′	3,950 "
" "W"		775′ x 21′	16,275 "
" "Y"		495′ x 10′	4,950 "
		Total	188,055 "
Tracks used jointly by N. Y. S. & W., and Storage Plant:			
Track "I"		2320′ x 13′	30,160 "
" "N"		{700′ x 30′ — 21,000 900′ x 20′ — 18,000 795′ x 30′ — 23,850}	62,850 "
		2395′	
Track "Q"		1505′ x 20′	30,100 "
Track "R"		1435′ x 13′	18,655 "
Track "S"		1405′ x 18′	25,290 "
		Total	167,055 "

N. Y. S. & W., entitled to use all tracks for railroad purposes.

Note: Track "P" removed.
N Y. S. & W. R. R. Co. may use all tracks.
See. Agr. 7/30/31 page 4 "Other uses. Fifth."

[fol. 28] Coalberg Licensing Ordinance.

Comparison of Saddle River Township 1943 Statistics, and Coalberg Valuations, Taxes and License Fee

Pop. 3,169

Items	Land Valuation	Improvements Valuation	Township Operating Cost	Township Budget	Taxes
Township Ratables	$867,935	$2,080,414	$59,277 00	$260,987 98	
Coalberg Valuations	21,747	113,400			
Coalberg					7,770 96
Coalberg Percentage	2 62	5 45	13 11	3 0	
License fee			37 0 %	8 4%	21,970 57
Coalberg Total			50 11%	11 4%	$29,741 53
Tax rate	5 75				
Consumption of capital value 17.4 years					
Maximum license fee capitalized at 5.75%			$382,097.00		

Sources:

(a) Land & Improvement valuations, abstract of Ratables &c. in Bergen County for 1943, Bergen Co., Board of Taxation.

(b) Operating cost and budget, Financial Statistics of N. J. Municipalities, N. J. Taxpayers' Assn., Nov. 1943.

D.E.M.
1/26/44.

[fol. 29] EXHIBIT P-4

This Agreement, made in duplicate this 10th day of July, A. D. 1939, by and between

Pennsylvania Coal Company, a Corporation organized and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called "Pennsylvania Company," party of the first part, and

C. E. Denny and John A. Hadden, Trustees of the property of Erie Railroad Company, hereinafter called "Trustees," parties of the second part.

Whereas, Pennsylvania Company is the owner in fee of certain tracts of land comprising approximately 67¼ acres situate in the Township of Saddle River, County of Bergen, State of New Jersey, upon which has been erected certain improvements and on which have been installed machinery, equipment, tracks, scales and other personal property, all owned by said Pennsylvania Company designed for use, and heretofore used as an anthracite coal storage yard and known as "Coalberg," and

Whereas, the said Coalberg Yard has been in possession of The Pittston Company, a Delaware Corporation, and its subsidiary Pattison & Bowns, Inc., a New York Corporation, for the storage therein of coal mined and prepared by The Pittston Company at its several mines located in the State of Pennsylvania heretofore operated by it under lease from Pennsylvania Company dated as of the first day of January, 1930, covering not only said coal mines and collieries but also said Coalberg Storage Yard, and [fol. 30] Whereas, by agreement between The Pittston Company and Pennsylvania Coal Company dated the 7th day of December, 1938, sometimes known as "Interim Agreement," the actual possession of Coalberg Storage Yard was surrendered by The Pittston Company and its sublessee, Pattison & Bowns, Inc., to Pennsylvania Coal Company as of December 1, 1938 and it was agreed by and between the parties that as of August 1st, Pennsylvania Coal Company would assume the cost and expense of operating the said Yard as set forth in a "Statement of Adjustments" attached to and made a part of the said Interim Agreement; and by agreement dated the 17th day of April, 1939, effective retroactively as of the first day of August, 1938, between The Pittston Company and the Pennsylvania Coal Company, the heretofore recited lease from Pennsylvania Coal Company to The Pittston Company covering the Lessor's coal mines and collieries located in the State of Pennsylvania and also the Coalberg Storage Yard were formally cancelled and terminated, and .

Whereas, by reason of the substantially lesser number of collieries which Pennsylvania Company is now operating as compared with the number of collieries it formerly operated, because of changes in marketing conditions and because Pennsylvania Company now and for some time past has been selling all its prepared coal as loaded in cars at the mines, said Pennsylvania Coal Company has no need for and does not desire to use its said Coalberg Storage Yard; and said Coalberg Storage Yard is of use and benefit to the Trustees in order that they may have facilities for the storage of prepared anthracite coal for shippers on Erie [fol. 31] lines whereon said Coalberg Storage Yard is located so that shipments of coal may not be diverted to other and competing lines on which facilities for coal storage are available; therefore it has been agreed by and between the parties hereto that Pennsylvania Company shall oper te

said Coalberg Storage Yard for and on behalf of said Trustees as hereinafter set forth.

Now, therefore, for and in consideration of the facts as hereinabove set forth, as well as the sum of One Dollar ($1.00) by each of the parties to the other in hand paid, receipt whereof is hereby acknowledged, as well as other good and valuable considerations, the parties hereto agree as follows, to wit:

1. That effective as of February 25, 1939, Pennsylvania Coal Company has operated and shall hereafter continue to operate its Coalberg Storage Yard located in the said Township of Saddle River, County of Bergen and State of New Jersey, for the benefit and on behalf of C. E. Denney and John A. Hadden, Trustees of the property of Erie Railroad Company, herein called "Trustees."

2. That the said Coalberg Storage Yard will be operated as a public service facility for shippers of prepared anthracite coal on Erie lines desiring storage space in accordance with and under the rates named in a certain Tariff on file with the Interstate Commerce Commission and the Public Utilities Commission of the State of New Jersey, iss-ed January 24, 1939 and effective as of the 25th day of February, 1939, and designated as I. C. C. No. D-1390; P. U. C.-N. J. No. 206; Erie Railroad Company Tariff No. G O 2213-F; New York, Susquehanna & Western R. R. Co. Tariff [fol. 32] No. S. W. 5447; Wilkes-Barre & Eastern R. R. Co. Tariff No. W. E. 1610-E, and any supplements thereto, which said Tariff is by reference made a part hereof.

3. The Trustees will maintain an agent at said Coalberg Storage Yard who shall be duly authorized on their behalf to issue warehouse receipts for coal placed in storage in said Yard for storage by shippers, and other than this agent, all others employed in and about Coalberg Storage Yard will be employed by Pennsylvania Company.

4. On or before the 20th day of each month, Pennsylvania Company will render unto the Trustees a statement of income and expenses which may be verified from the books of Pennsylvania Company at all reasonable times by proper representatives of the Trustees and said Trustees will thereupon on or before the end of the calendar month, reimburse Pennsylvania Company for the net loss, if any, or the Pennsylvania Company will remit to the Trustees

the net surplus, if any, resulting from the operation of said Storage Yard during the previous calendar month.

Included in the allowable items of expense chargeable against the operation and maintenance of the said Coalberg Storage Yard on the part of the Pennsylvania Company shall be such items as taxes, insurance, Workmen's Compensation costs, payroll and unemployment insurance taxes, maintenance of equipment and facilities, and a proportionate part of the wages or salaries and expenses of employees and officers of Pennsylvania Company, not regularly employed at the Coalberg Storage Yard, computed on the basis of the time actually spent on matters pertaining to said Storage Yard, but not excluding by this specific enumera- [fol. 33] tion any other items of expense which properly should be chargeable as an expense of operation and maintenance of said Coalberg Storage Yard.

5. All coal on hand at said Coalberg Storage Yard as of December 1, 1938, purchased by Pattison & Bowns, Inc. from The Pittston Company has been reloaded into cars without charge to expense of operation of the plant to the extent that such coal was reloaded on or before March 31st, 1939, in accordance with the provisions of agreement between Pennsylvania Coal Company and The Pittston Company ("8" paragraph) dated the 7th day of December, 1938, sometimes known as "Interim Agreement."

6. This agreement may be cancelled at any time by either party hereto upon sixty days' notice to the other in writing.

7. All records, books of account and other data of Pennsylvania Company relating to its operation of said Coalberg Storage Yard, shall be at all times open to the inspection of proper representatives of the Trustees.

8. The Trustees shall reimburse Pennsylvania Company and indemnify said Pennsylvania Company against all claims and demands and all suits, actions and causes of action brought thereon by or on behalf of any and all persons, including firms and corporations, which may arise or grow out of the operation of said Coalberg Storage Yard by Pennsylvania Company from and after February 25, 1939, and anything done or omitted to be done by it or on its behalf in connection therewith or in consequence thereof, except such claims and demands as may arise

[fol. 34] as the result of malfeasance of the employees or officers of Pennsylvania Company.

In witness whereof, Pennsylvania Company has caused this agreement to be signed by its President, with its corporate seal attached hereto, attested by its Secretary, and the Trustees have hereunto set their hands the day and year first above written.

Pennsylvania Coal Company, by L. L. White, President.

Attest:

F. V. Lynn, Asst. Secretary. C. E. Denney and John A. Hadden, Trustees of the property of Erie Railroad Company, by R. E. Woodruff, Vice President.

EXHIBIT P-5

Lease

Agreement made this 20th day of June, 1939, between Pennsylvania Coal Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "Lessor") and Independent Warehouses, Inc., a corporation organized and existing under the laws of the State of New York, having its principle office at No. 415 Greenwich Street, City and State of New York, (hereinafter called "Lessee").

[fol. 35] Witnesseth:

First. The Lessor has agreed to let and hereby does let, and the Lessee has agreed to take and hereby does take, the following premises:

All the lands, tenements and hereditaments in the township of Saddle River, County of Bergen and State of New Jersey, included in the coal storage yard owned by the Lessor known as Coalberg, New Jersey, together with all trimmers in said coal yard; which premises the Lessor represents are owned by it and suitable for use as a warehouse for the storage of coal for the term of one (1) year beginning June 20, 1939, and ending on June 19, 1940, and for such further period of time during which any agreement or agreements heretofore or hereafter en-

tered into, either between the parties hereto, or between the Lessee and any third person, firm, corporation, company or association, covering the warehousing of certain coal located upon the leased premises, may be outstanding, unfulfilled and uncompleted; provided, however, that this lease shall not terminate until such time as all negotiable and non-negotiable warehouse receipts outstanding issued by the Lessee to any person, firm, company or association, shall have been surrendered to the Lessee.

The Lessee agrees to pay the Lessor the sum of One Dollar ($1.00) and other good and valuable consideration, as and for the rent of said premises, the receipt whereof is hereby acknowledged by the Lessor.

To have and to hold the said premises, with the appurtenances unto the Lessee, together with the right to place and maintain such signs and marks thereon, or on the [fol. 36] property stored thereon, as may be necessary to indicate the proprietorship of the said Lessee, and the paramount right at all times during the continuance of this lease to employ any facilities which may be necessary and proper to carry on the business of the Lessee on the leased premises.

Second. The Lessor hereby warrants that the title to the premises described herein and all property contained upon said premises is fully vested in it.

Third. The Lessor hereby gives the Lessee permission, power and authority to receive and hold as a general public warehouseman on storage in the said warehouse any and all types of coal that may be lawfully tendered to said Lessee by any person, firm, corporation, company or association for storage, upon any terms deemed proper by the Lessee, and to issue therefor the Lessee's warehouse receipts in the usual customary form, or as required by law.

Fourth. It is further agreed that the Lessor shall furnish all material and labor and bear all expenses of keeping and maintaining said premises in good order and repair, and shall not in any manner interfere with the full and exclusive occupancy, possession and control of the leased premises and the contents thereof by the Lessee, and shall not authorize or permit any of its officers, agents or employees to enter the leased premises or in any manner,

directly or indirectly to remove or tamper with any of the property stored upon said premises by said Lessee.

Fifth. That the Lessee shall not, without the consent of the Lessor, for all or any part of the term hereby [fol. 37] granted, sublet the said premises or occupy or use the same in any other manner than for storage purposes and for the transaction of such business as need be connected therewith or incident thereto and for the transaction of the business of a general public warehouseman.

Sixth. Should the Lessor violate any of the terms or conditions of this lease, or in any manner interfere with or make difficult the duties of the Lessee, its agents, servants, or employees, or become insolvent; or should the premises hereby leased become involved in litigation; or should the Lessor or Lessee be ejected or ousted therefrom, or proceedings be taken for that purpose; or should the Lessee at any time deem it necessary for the protection of its interest or of the property stored; then, and in all of such events, the Lessee shall have the right to remove all property from the premises herein described to such other place or places as the Lessee may deem proper or expedient and in case of any such removal, the Lessor agrees to pay to the Lessee all expenses of such removal and of storing said property elsewhere, until the property so stored shall be released on surrender of any receipts therefor.

Seventh. The Lessor agrees to execute or cause to be executed any further agreement or agreements that may be necessary to secure the continued use and enjoyment of the premises hereby leased.

Eighth. It is understood and agreed that notwithstanding this agreement is for the term of one year ending June 19th, 1940, that this Agreement may nevertheless be terminated by either party hereto on thirty (30) days written notice to the other part; provided, however, that the termination of said Agreement shall not be effective as long as [fol. 38] any Agreement or Agreements heretofore or hereafter entered into, either between the parties hereto, or between the Lessee and any third person, firm, corporation, company or association, covering the warehousing of certain coal located upon the leased premises, may be outstanding, unfulfilled and uncompleted, or as long as any negotiable or

non-negotiable warehouse receipts issued by the Lessee to any person, firm, company or association are still outstanding and surrendered.

In witness whereof, the parties hereto have executed this Agreement in duplicate the day and year first above written.

Pennsylvania Coal Company (Sgd.) H. J. Connolly, Vice President.

Attest:

(Sgd) E. D. Adair, Secretary. Independent Warehouses, Inc. (Seal.) John T. McCormick, Vice President.

Attest: (Sgd.) L. J. Schulz, Secretary.

State of New York,
County of New York, ss:

On this 8th day of June, 1939, before me personally came J. T. McCormack, to me known, who, being by me duly sworn, did depose and say that he resides in Queens County, [fol. 39] New York, that he is the Vice-President of Independent Warehouses, Inc., the corporation described in and which executed the foreging instruments; that he knows the seal of said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Sgd.) James E. Reilly, Notary Public, Kings County. Kings Co. Clk's No. 103, Reg. No. 216; N. Y. Co. Clk's No. 224, Reg. No. SR-144. Commission expires March 30, 1940.

Commonwealth of Pennsylvania,
County of Lackawanna, ss:

I hereby certify that on this 9th day of July, in the year of Our Lord One Thousand Nine Hundred and Thirty-Nine, before me, the subscriber, a notary public, personally appeared H. J. Connolly, Vice President of Pennsylvania Coal Company, the attorney named in the foregoing lease, and by virtue and in pursuance of the authority therein con-

ferred upon him, acknowledged the said lease to be the act of said Pennsylvania Coal Company.

Witness my hand and my seal the day and year aforesaid.

(Sgd) James E. Hallock, Notary Public. (Seal.)

My Commission expires September 18, 1942.

[fol. 40] EXHIBIT P-6

This agreement, made this 20th day of June, 1939; between Pennsylvania Coal Company, a corporation organized and existing under the Laws of the Commonwealth of Pennsylvania (hereinafter called "Customer") and Independent Warehouses, Inc., a corporation organized and existing under the Laws of the State of New York, having its principal office at 415 Greenwich Street, City and State of New York (hereinafter called the "Warehouse Company").

Whereas, the Customer owns premises suitable for use as a warehouse for the storage of coal in the Township of Saddle River, County of Bergen and State of New Jersey; and

Whereas, it is the desire and for the interest of said Customer that said Warehouse Company shall acquire the exclusive control of said premises and conduct therein the general business of a warehouseman and receive, warehouse, hold and store coal therein and issue its warehouse receipts for such coal as shall be tendered by anyone to it as such general warehouseman, including coal owned by said Customer, and which said Customer shall deliver or cause to be delivered to said Warehouse Company for such purposes.

Now, therefore, This Agreement Witnesseth, that in consideration of the sum of Ten ($10.) Dollars paid by each of the parties hereto to the other, the receipt whereof is hereby acknowledged, and in consideration of the mutual promises and agreements made, it is agreed as follows:

First. The Customer has leased to the Warehouse Company, by lease dated June 20th, 1939, said premises suitable [fol. 41] for use as a warehouse for the storage of coal in the Township of Saddle River, County of Bergen and State of New Jersey. Said premises are hereinafter referred to

as "warehouse." This agreement hereby grants to the Warehouse Company exclusive and undisturbed possession and control of said warehouse with rights of free ingress and egress during and at all reasonable times, together with the right to place such signs and marks thereon, and on the property stored therein, as may be necessary to indicate that said warehouse is leased to the Warehouse Company, and is under its exclusive power, control and operation, and that it is conducting therein the business of a general warehouseman.

Second. It is understood and agreed that the Warehouse Company is entitled to receive and hold as a general public warehouseman on storage, in said warehouse any and all types of coal that may be lawfully tendered to it for storage, by any person, firm, corporation, company or association, and to issue therefor its warehouse receipts in the usual customary form, or as required by law.

Third. The Warehouse Company convenants that it will proceed diligently to carry out the purposes of this agreement, and that it will from time to time receive and hold as a warehouseman in the warehouse to be operated pursuant to this agreement, any and all types of coal that may be lawfully tendered to it for warehousing for the account or at the request of the Customer, provided that at the time of such tender of coal, the Warehouse Company shall have space and facilities in said warehouse in which it can store such coal as may be offered for storage.

[fol. 42] Fourth. The Customer agrees to pay or cause to be paid to the Warehouse Company the sum of two cents (02c) per ton for all coal, for which receipts are issued, which said Customer has placed or shall cause to be placed, or which shall remain in the possession or control of the Warehouse Company for one year from the date of the commencement of this agreement, or any part thereof. It is understood that the minimum amount payable by the Customer to the Warehouse Company for the period of one year, beginning June 20th, 1939, is Six Hundred ($600.) Dollars. Should this agreement continue in effect after June 19, 1940, the charge for the storage of coal will be the same as that during the previous term; it being understood that the minimum sum payable by the Customer to the Ware-

house Company hereunder will be Fifty ($50.) Dollars per month.

Fifth. The Customer hereby agrees to reimburse the Warehouse Company for any loss, costs, expenses or damages paid or incurred by the Warehouse Company in connection with the warehousing operations on the demised premises, including all attorney's fees, or other costs or expenses of litigation, but not including ordinary operating losses, costs or expenses of the Warehouse Company and not including any losses, costs, expenses or damages paid or incurred as a result of the gross negligence of the Warehouse Company or its employees or agents. To secure the liability of the Customer hereunder, the Customer does hereby grant and convey to the Warehouse Company a lien on all its coal stored with the Warehouse Company at the time any such loss, cost, expense or damage may be incurred. Said lien may be enforced in the same manner as the warehouseman's lien for storage or other charges is en-
[fol. 43] forced under the Laws of the Commonwealth of Pennsylvania.

Sixth. The Warehouse Company agrees to provide a warehouse manager to manage said warehouse. The Customer agrees to pay the Warehouse Company, monthly in advance, in addition to the consideration set forth in Clause "Fourth" of this agreement, an amount equal to the salary of said warehouse manager plus the premium on Workmen's Compensation Insurance covering said warehouse manager plus taxes and charges levied on said warehouse manager's salary as a result of Federal and State Unemployment Laws, Old Age Pensions and Annuity Legislation. The Customer agrees to provide from among its own employees such competent and experienced man or men as shall be reasonablely necessary or required by the Warehouse Company in order to perform all labor and properly to operate, warehouse, receive, handle and deliver the coal intended to be warehoused in pursuance of this agreement. It is distinctly understood, however, that such man or men provided by the Customer shall at all times be in the service and under the absolute control of the Warehouse Company while employed for such purpose. The Customer agrees to pay all taxes and charges levied or assessed upon payrolls of warehouse employees used in the operation of this agree-

ment, as a result of Federal and State Unemployment Laws, Old Age Pensions and Annuity Legislation, and to comply with the Laws of the Commonwealth of Pennsylvania for providing Workmen's Compensation Insurance for its employees used hereunder. It is understood that the delivery of coal to said warehouse and the transportation of coal from said warehouse shall be performed by the Customer.

[fol. 44] Seventh. The Customer agrees to execute or cause to be executed any further agreement or agreements that may be necessary to secure the continued use and enjoyment of said warehouse.

Eighth. This agreement shall terminate on the 19th day of June, 1940, except as to coal covered by outstanding negotiable or non-negotiable warehouse receipts issued by the Warehouse Company to the Customer, or to any person, firm, corporation, company or association, which have not been surrendered to the Warehouse Company. The obligations of the Warehouse Company shall be subject at all times to strikes, wars, internal disturbances, fires and conditions unavoidable and beyond its control. The rights and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective successors and assigns.

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective officers, in duplicate, the day and year first above written.

Pennsylvania Coal Company, A. J. Connolly, Vice-President.

Attest:

E. D. Adair, Secretary.

Independent Warehouses, Inc., John T. McCormack, Vice-President.

Attest: L. J. Schulz, Secretary.

[fol. 45] State of New York,
County of New York, ss:

On this 8th day of July, 1939, before me personally came J. T. McCormack, to me known, who, being by me duly sworn, did depose and say that he resides in Queens County, New York, that he is the Vice-President of Independent

Warehouses, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

JAMES E. REILLY.

COMMONWEALTH OF PENNSYLVANIA,
County of Lackawanna, ss:

I hereby certify that on this 9th day of July, in the year of Our Lord One Thousand Nine Hundred and Thirty-Nine, before me, the subscriber, a notary public, personally appeared H. J. Connolly, Vice-President of Pennsylvania Coal Company, the attorney named in the foregoing lease, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said lease to be the act of said Pennsylvania Coal Company.

Winess my hand and my seal the day and year aforesaid.

JAMES E. HOLLOCK

[fol. 46] EXHIBIT P-7.

This Supplemental Agreement made and executed in duplicate this 24th day of May, 1940, by and between

Pennsylvania Coal Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called "Customer," and

Independent Warehouses, Inc., a corporation organized and existing under the laws of the State of New York and having its principal office at 415 Greenwich Street, City and State of New York, hereinafter called "Warehouse Company":

Whereas, by agreement of lease dated 20th day of June, 1939, by and between the parties hereto, the Customer as the owner of certain lands suitable for and used as a storage for anthracite coal, in the Township of Saddle River, County of Bergen and State of New Jersey, leased and demised the said lands to Company for a term of one (1) year beginning June 20, 1939 and ending June 19, 1940, "and for such further period of time during which any agreement or agreements heretofore or hereafter entered into either between the parties hereto or between the Lessee (Warehouse

Company) and any third person * * * covering the warehousing of certain coal located on the leased premises, may be outstanding, unfulfilled and uncompleted" and during such time as warehouse receipts issued by the Warehouse Company shall be outstanding, which said agreement of Lease is by reference made a part hereof with the same force and effect as if herein fully written out and shall hereinafter be referred to as "Coalberg Lease" and

[fol. 47] Whereas, by a collateral agreement between the parties hereto dated as of the date of the said "Coalberg Lease" to wit, 20th day of June, 1939, the parties further agreed as to their respective rights, duties and obligations in the control, management, and business of storing anthracite coal on the lands covered by the said Lease for a term or period of one (1) year and for such further term or period as may be necessary for the Warehouse Company to fill and completely discharge its obligations to owners of coal and holders of warehouse receipts covering coal held for storage on the leased premises; and by letter of October 9, 1939 addressed to the Customer by the Warehouse Company and by the Customer accepted and agreed to, the parties modified the "Fourth" paragraph of the said agreement changing the specific rate paid by the Customer to the Warehouse Company for coal stored on the leased premises from Two Cents ($.02) per ton to One Half Cent ($.01½) per ton effective as of October 1, 1939, which said collateral agreement as modified by the letter of October 9, 1939, is also by reference made a part hereof with the same force and effect as if herein fully written out and hereinafter shall be referred to as "Warehouse Agreement,"; and

Whereas, the parties hereto now desire and have agreed to extend the term of the said Coalberg Lease and Warehouse Agreement for a further period of one (1) year from and as of the 1st day of April, 1940, and thereafter from year to year, and as thus extended in term to modify the provisions of the "Fourth" paragraph of the Warehouse Agreement as hereinafter set forth:

[fol. 48] Now, therefore, this Agreement Witnesseth:

That for and in consideration of the facts heretofore set forth, as well as the sum of One ($1.00) Dollar lawful money of the United States of America from each of the parties to the other in hand paid, receipt whereof is hereby acknowl-

edged, the parties hereto have agreed and do hereby agree as follows:

First. The heretofore recited Coalberg Lease and Warehouse Agreement shall be and are hereby renewed and extended in term for a further period or term of one (1) year from the 1st day of April, 1940 to the 31st day of March, 1941, and thereafter from year to year until either party hereto shall notify the other of its desire to terminate and cancel the said Lease and Agreement by a written notice addressed to Pennsylvania Coal Company, Box 391, Scranton, Pennsylvania or to Independent Warehouses, Inc., 415 Greenwich Street, City of New York, New York, not less than thirty (30) days prior to the end of the present or any succeeding term, whereupon the said Coalberg Lease and Warehouse Agreement shall end and determine as of the end of the then current term except as to coal covered by outstanding negotiable or non-negotiable warehouse receipts issued by the Warehouse Company to Customer or to any person, firm, corporation, Company or Association which have not been surrendered or otherwise satisfactorily accounted for prior to the effective date of said notice.

Second. As of the effective date of this agreement, to wit, first day of April, 1940, the parties agree that the "Fourth" paragraph of the heretofore recited Warehouse Agreement as amended by letter of October 9, 1939, shall be and is further amended to read as follows:

[fol. 49] "Fourth: The Customer agrees to pay or cause to be paid to the Warehouse Company the sum of one half cent (½c) per ton for all coal, for which receipts are issued, which said Customer has placed or shall cause to be placed, or which shall remain in the possession or control of the Warehouse Company for one year from the date of the commencement of this agreement, or any part thereof. It is further understood that the yearly minimum amount payable by the Customer to the Warehouse Company, beginning April 1, 1940, is and shall be Five Hundred ($500.) Dollars."

Third. That except as herein specifically extended in term and modified the heretofore recited "Coalberg Lease" and "Warehouse Agreement" are ratified and affirmed.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed by their proper officers with

their corporate seals hereunto attached, attested by the signatures of their respective Secretaries or Assistant Secretaries, the day and year first above written.

Pennsylvania Coal Company, by (Sgd) H. J. Connolly, President.

Attest: (Sgd) F. V. Lynn, Asst. Secretary. (Seal)

[fol. 50] Independent Warehouses Inc., by (Sgd) E. H. Maxwell, President.

Attest: (Sgd) J. A. Muller, Treasurer Secretary. (Seal)

R. W. R.
E. D. A.

State of New York,
County of New York; ss:

On this 26th day of June, 1940 before me personally came E. H. Maxwell, to me known, who, being by me duly sworn, did depose and say that he resides in Katonah, New York, that he is the President of Independent Warehouses, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Edward L. Cunningham

Commonwealth of Pennsylvania,
County of Lackawanna, ss:

I hereby certify that on this 26th day of June, in the year of Our Lord One Thousand Nine Hundred and Forty, before me, the subscriber, a notary public, personally ap-
[fol. 51] peared H. J. Connolly, President of Pennsylvania Coal Company, the attorney named in the foregoing lease, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said lease to be the act of said Pennsylvania Coal Company.

Witness my hand and my seal the day and year aforesaid.

James E. Hallock.

EXHIBIT P-8.

This Agreement, made in duplicate this 12th day of June 1940, by and between Pennsylvania Coal Company, a corporation of the State of Pennsylvania with offices at Scranton, Penna., hereinafter called the "Coal Company," party of the first part, and Walter Kidde, as Trustee of the property of New York, Susquehanna and Western Railroad Company, with offices in New York City, hereinafter called the "Railroad," party of the second part;

Witnesseth:

Whereas, the Coal Company owns a coal storage yard located at Coalberg (Rochelle Park, N. J.) which said yard prior to February 25, 1939, was operated by Pattison & Bowns, Inc., and under agreement dated September 16, 1926 between said Pattison & Bowns, Inc., and New York, Susquehanna and Western Railroad Company, as said agreement was thereafter supplemented and amended, Pattison & Bowns, Inc., furnished water for the locomotives of said Railroad Company and performed certain services for said Railroad Company at said yard, and

[fol. 52] Whereas, effective February 25, 1939, said Pattison & Bowns, Inc., discontinued the operation of said coal storage yard and the operation of said yard was then taken over by the Coal Company, party of the first part hereto and the latter continued to furnish water for the locomotives of the Railroad, party of the second part hereto, and to render services to the Railroad as theretofore and the Railroad paid for the same at the rates and prices set forth in said agreement of September 16, 1926, as supplemented and amended, and

Whereas, by agreement effective July 1, 1939 between the Coal Company and the Trustees of the property of Erie Railroad Company the Coal Company agreed to operate said coal storage yard for the benefit of the said Trustees, and effective on that date, the parties hereto arranged for the continuance of the furnishing of water for locomotives and the continuance of the other services theretofore furnished, payment therefor to be made by the Railroad Company to the Coal Company as hereinafter set forth;

Now, Therefore, the parties hereto hereby agree as follows, effective as of July 1, 1939:

1. The Coal Company shall, in the first instance, employ and carry on its payrolls a competent and responsible supervisor and chief clerk as well as other employees, equipment and facilities, to properly operate the pumps and their appurtenances for the pumping of water at the aforesaid coal storage yard at Coalberg, N. J., and agrees to furnish a supply of water from its tanks to be delivered at said yard to the locomotives of the Railroad, the amount of such supply of water to be the full amount required by the Railroad [fol. 53] for its locomotives, up to but not more than the present capacity of the pumping plant and storage tanks.

2. All pumps, pumping equipment and water tanks, together with their appurtenances, shall be maintained, repaired and renewed by the Coal Company at its sole cost and expense. The water crane and its necessary connections to the water tank of the Coal Company shall be maintained, repaired and renewed by the Railroad at the sole cost and expense of the latter.

3. The aforesaid supervisor and chief clerk of the Coal Company at said coal storage yard shall perform for the Railroad as heretofore, certain services consisting of billing and weighing of cars at said coal storage yard and the preparation and handling of necessary reports in connection therewith.

4. In consideration for the performance of said clerical services and weighing of cars by the said supervisor and chief clerk, the Railroad agrees to pay to the Coal Company periodically upon receipt of bills or vouchers therefor, two-thirds of the wages or salary of the said supervisor and two-thirds of the wages or salary of such chief clerk, plus two-thirds of the so-called payroll taxes (being taxes or contributions paid under State or Federal Laws and regulations for pensions or old-age retirement benefits and for unemployment insurance), which the Coal Company is obligated to pay upon the salaries or wages of said supervisor and chief clerk. It is agreed that the wages or salaries of the said supervisor and/or chief clerk shall not be increased without the consent of the Railroad. The cost of premiums or any bond or bonds required by the Railroad in connection with the said work performed for it in the [fol. 54] weighing of cars, shall be assumed and paid by the Railroad.

5. For the water furnished at said coal storage yard by the Coal Company for the locomotives of the Railroad, the Railroad agrees to pay to the Coal Company $75 per calendar month for the water furnished up to but not more than sixty thousand cubic feet per month.

If at any time the officers or authorized representatives of the Coal Company have reason to believe that the average monthly consumption of water by locomotives of the Railroad is more than sixty thousand cubic feet, they shall so advise the proper officers or representatives of the Railroad and if from the investigations of the officers or representatives of the Railroad or from evidence submitted by the Coal Company, the officers or representatives of the Railroad conclude that there may be an average consumption by locomotives of the Railroad in excess of sixty thousand cubic feet of water per month, then during a test period of six months immediately following, a daily record shall be kept in a manner to be agreed upon, of the water furnished for the Railroad's locomotives. If it is found, as a result of such test, that the average monthly consumption has been more than sixty thousand cubic feet, then the amount of the average excess per month shall be agreed upon, taking into consideration conditions during the test period and probable future conditions, and the officers or representatives of each of the parties hereto shall also agree on the additional amount per month to be paid by Railroad for such excess, which additional amount shall be at a rate of not more than $1.25 per thousand cubic feet.. [fol. 55] Payment at the increased rate per month as so determined, shall be made and continued until the parties find and agree that during any subsequent period of six months, a total average amount of water greater or less than the total average amount last previously agreed upon has been furnished. In case of agreement upon any such greater or less average amount of water, the amount per month to be paid by the Railroad shall be increased or decreased proportionately. Such finding and agreement shall be reached in accordance with the procedure outlined in the next preceding paragraph, provided, however, that demand for a decreased rate may be initiated by the officers or representatives of the Railroad.

In case the parties hereto shall be unable to agree as to any matter in the foregoing paragraphs of this Article provided to be agreed upon, within thirty days after advice

by either party to the other of the matter so to be determined and agreed upon between them, then either party hereto may terminate this Agreement by giving to the other party at least sixty days' previous notice in writing of such termination.

6. (a) For the purpose of determining liability, as between the parties hereto, for any loss of or damage to property or injury to or death of person (all hereinafter for convenience called "damage") occurring in connection with the furnishing of the water or the services as provided in this Agreement, it is agreed that each of the aforesaid supervisor and chief clerk shall be considered to be the sole employe of the party hereto for which he is currently performing service.

(b) Each party hereto shall be liable for all damage so [fol. 56] occurring due as a proximate cause to the negligence or fault of its officers, agents or employees or to the failure of its equipment or facilities.

(c) If any damage so occurring is caused by the negligence or fault of the employes of both parties hereto, or to the failure of the equipment or facilities of both parties hereto or to the fault or negligence of parties other than the parties hereto, or to the failure of the equipment or facilities of such other party, then and in any such case, each party hereto shall assume and bear the cost of all damage to its employes and property and to persons and property in its charge or possession, and all other damage so caused shall be borne and paid by the parties hereto in equal proportions.

(d) In every case of death, or injury occurring to an employee of either party, the compensation required by law to be paid on account thereof shall be borne and paid by one or both of the parties hereto in accordance with the foregoing provisions, and if and when such compensation is required to be paid in installments over a period of months or years, neither party shall be released from the payment of its share of any future installment for which it may be or become liable hereunder by the cancellation or termination of this Agreement.

7. This Agreement shall take effect as of the first day of July, 1939, and, as the same may be modified from time to

time by the mutual agreement of the parties, shall extend until terminated by mutual agreement or by either party giving to the other at least ninety days' notice in writing of such termination.

[fol. 57] 8. It is agreed between the parties hereto that this Agreement is intended to supercede and terminate as of September 1, 1939 the aforesaid agreement dated September 16, 1926 between New York, Susquehanna and Western Railroad Company and Pattison & Bowns, Inc., as said agreement was supplemented and amended and as of July 1, 1939, supercedes and terminates the arrangement between the parties hereto to continue the terms of the aforesaid agreement of September 16, 1926, as supplemented and amended.

In Witness Whereof, the parties hereto have executed this Agreement as of the date first hereinbefore written.

Pennsylvania Coal Company, by H. J. Connolly, President.

Attest: E. D. Adair, Secretary. Walter Kidde, as Trustee of the property of New York, Susquehanna and Western Railroad Company.

Witness: ——— ———.

[fol. 58] EXHIBIT P-9

This Agreement, made this 30th day of July 1931, between New York, Susquehanna and Western Railroad Company (hereinafter called the Railroad Company), and Pennsylvania Coal Company, a corporation incorporated under the laws of the State of Pennsylvania, with principal office at Scranton, Pa. (hereinafter called Pennsylvania), and The Pittston Company, a corporation incorporated under the laws of the State of Delaware, with principal office at 19-21 Dover Green, City of Dover, County of Kent, State of Delaware (hereinafter called Pittston), and Pattison & Bowns, Inc., a corporation incorporated under the laws of the State of New York, with principal office at 17 Battery Place, New York, N. Y. (hereinafter called Pattison).

Witnesseth

Whereas, Pattison is using track facilities for the economical and convenient conduct of its business, in the Town-

ship of Saddle River (Coalberg), County of Bergen, State of New Jersey, described as follows:

"A" beginning at a point of switch in sidetrack "O" and extending in a general westerly direction for a distance of 2005 feet to the outer end thereof, said sidetrack "A" having two hoppers thereunder,

"B" beginning at a point of switch in sidetrack "A" and extending in a general westerly direction for a distance of 1490 feet to outer end thereof, said sidetrack "B" having two hoppers thereunder,

Said sidetracks "A" and "B" being connected by two crossovers having a total length of 336 feet,

[fol. 59] "C" beginning at a point of switch in sidetrack "A" and extending in a northwesterly direction for a distance of 212 feet to outer end thereof,

"E" beginning at a point of switch in sidetrack "N" and extending in a westerly direction for a distance of 5000 feet, said sidetrack "E" having three track scales and one hopper thereunder,

"F" beginning at a point of switch in sidetrack "E" and extending in a westerly direction for a distance of 1380 feet to a point of switch in sidetrack "E",

"G" beginning at a point of switch in sidetrack "Y" and extending in an easterly direction for a distance of 1360 feet to outer end thereof,

"H" beginning at a point of switch in sidetrack "N" and extending in a westerly direction for a distance of 3080 feet to a point of switch in said sidetrack "I", said sidetrack "H" having four hoppers thereunder,

"I" beginning at a point of switch in sidetrack "H" and extending in a westerly direction for a distance of 2700 feet to a point of switch in said sidetrack "E", said sidetrack "I" having eight hoppers thereunder,

"J" beginning at a point of switch in sidetrack "I" and extending in an easterly direction for a distance of 270 feet to outer end thereof, said sidetrack "J" having one hopper thereunder,

"K" beginning at a point of switch in sidetrack "I" [fol. 60] and extending in an easterly direction for a distance of 250 feet to outer end thereof, said sidetrack "K" having one hopper thereunder,

"L" beginning at a point of switch in sidetrack "I" and extending in an easterly direction for a distance

of 250 feet to outer end thereof, said sidetrack "L" having one hopper thereunder,

"M" beginning at a point of switch in sidetrack "I" and extending in an easterly direction for a distance of 250 feet to outer end thereof, said sidetrack "M" having one hopper thereunder,

"N" beginning at a point of switch in westbound main track of the Railroad Company 75.5 feet easterly of M. P. 16 and extending in a general westerly direction for a distance of 2505 feet to a point of switch in track "R", said sidetrack "N" having one track scale thereunder,

"O" beginning at a point of switch in track "N" and extending in a westerly direction for a distance of 3990 feet,

"P" beginning at a point of switch in track "N," and extending in an easterly direction for a distance of 300 feet to outer end thereof,

"Q" beginning at a point of switch in track "H" and extending in a westerly direction for a distance of 1505 feet to a point of switch in track "U," said sidetrack "Q" having two hoppers thereunder,

"R" beginning at a point of switch in track "N" [fol. 61] and extending in a westerly direction for a distance of 1435 feet to a point of switch in track "Q," said sidetrack "R" having two hoppers thereunder,

"S" beginning at a point of switch in track "R" and extending in a westerly direction for a distance of 1405 feet to a point of switch in track "Q,"

"T" beginning at a point of switch in track "Q" and extending in a westerly direction for a distance of 320 feet to outer end thereof, said track "T" having one hopper thereunder,

"U" beginning at a point of switch in track "Y" and extending in an easterly direction for a distance of 510 feet to a point of switch in track "Q,"

"V" beginning at a point of switch in track "W" and extending in a westerly direction for a distance of 395 feet.

"W" beginning at a point of switch in track "U" and extending in a westerly direction for a distance of 775 feet, having one track scale thereunder;

"Y" beginning at a point of switch in track "W" and extending in a westerly direction for a distance of 495 feet,

said sidetracks being in the position shown by solid red, solid yellow, and red and yellow dashed lines, and said track scales and hoppers being shown in the position shown by solid green lines on plan entitled:

[fol. 62] N. Y. S. & W. R. R.

Main Line

Plan Showing Tracks Serving
Pittston Company

Coalberg, Township of Saddle River, N. J.
Office of Division Engineer Jersey City
Scale: 1"—100' Feb. 3, 1926.
Made by A.P.L. Ch'd By

Valuation Section 3-N. J.

Rev. Aug. 16, 1927 Rev. June 19-29 A-1493-S

, and,

Whereas, Pennsylvania owns the coal storage plant adjacent to the right of way of the Railroad Company which is served by said system of sidetracks, and said plant is leased by Pennsylvania to Pittston, subject however to a prior lease and agreement made between Pennsylvania and Pattison and assigned by Pennsylvania to Pittston.

Now, Therefore, in consideration of the covenants and agreements herein contained, it is mutually agreed that the sidetracks shall be maintained and used upon the following terms and conditions:

Definition. *First:* The word "sidetrack" as used in this agreement refers to all of the track facilities above described and intended to be covered by this agreement, and includes all appurtenances thereto and any trestle, hopper or other structure over which the track or tracks may be constructed.

Right-of-way. *Second:* Pattison shall provide, without cost to the Railroad Company, all necessary right of way outside of the right of way of the Railroad Company, re-
[fol. 63] quired for the proper construction and operation

of the sidetrack, said right of way to be satisfactory to the Superintendent of the Railroad Company.

Pattison assumes responsibility for obtaining, without cost to the Railroad Company (other than salaries of railroad officers, attorneys and employes), any ordinance, order, permit or consent whatsoever, required by municipal, state or other lawfully constituted authorities for the construction, operation, maintenance and use of the sidetrack, but the Railroad Company will, upon request of Pennsylvania, execute and file any application therefor which is required.

The Railroad Company shall have the right to enter upon the property for the purpose of constructing, maintaining and operating the sidetrack, and of removing, upon the termination of this agreement, any tracks, structures or materials belonging to the Railroad Company.

Maintenance. *Third:* The Railroad Company agrees except as hereinafter provided to repair and maintain at its own expense tracks "E," "F," and portion of track "N" located on its lands, and tracks "G," "O," "U," "V," "W" and "Y" located outside of the lands of and preponderantly used by the Railroad Company, said tracks being in solid red lines on said blueprint plan.

The Railroad Company further agrees except as hereinafter provided to repair and maintain track "H" and two portions of track "I" on its lands, and tracks "Q," "R," "S" and portions of tracks "I" and "N" located outside of the lands of the Railroad Company in consideration of the use by the Railroad Company for purposes other than serving Pattison, and Pattison agrees to reimburse the Railroad for 50% of the cost of such repair and main- [fol. 64] tenance, said tracks being shown in red and yellow dashed lines on said blueprint plan.

However, should at any future time for any reason the Railroad Company no longer avail itself of the use of any portion of the sidetrack located outside the lands of the Railroad Company and included in the first and second paragraphs of this Article, it is agreed that it will no longer continue to repair and maintain such portion of the sidetrack, in which case Pattison shall, at its own expense, maintain, repair and renew to the satisfaction of the Superintendent of the Railroad Company such portion of sidetrack located outside the lands of the Railroad Company.

Pattison shall, at its own expense, maintain, repair and renew to the satisfaction of the Superintendent of the Railroad Company, tracks "A" and "B" (including two connecting crossovers between said tracks) "C," "J," "K," "L," "M," "P" and "T," and portion of track "N" shown in solid yellow lines on said blueprint plan. Maintenance shall include removal of snow and ice.

However, upon receipt of request from Pattison, the Railroad Company will, when practicable, furnish material or labor required by this paragraph to be furnished by Pattison, and Pattison shall advance to the Railroad Company the estimated cost thereof. If the cost as finally determined is less than the sum so advanced, the Railroad Company shall repay to Pattison the difference, and if such cost exceeds the sum so advanced, Pattison shall pay to the Railroad Company the amount of such excess upon receipt of proper bill therefor. Both the estimated and the final cost above referred to shall include for accounting, supervision and use of tools, fifteen per cent. (15%) of all items of labor and materials.

[fol. 65] Pattison further agrees to repair and maintain at its own expense all hoppers and track scales, except as hereinafter provided, under said sidetracks and tell-tales, said hoppers and said track scales being in the position shown by green lines and said tell-tales in the position shown by white cross lines on said blueprint plan, except that the Railroad Company agrees to repair and maintain track scale No. 4 under track "W" so long as it shall have use for same and in event such use shall be discontinued Pattison will assume the entire cost of repair and maintenance of said track scale No. 4.

If Pattison fails to perform its obligations in connection with maintenance as above set forth, then the Railroad Company, after notice to Pattison may refuse to operate over the sidetrack or obstruct the same or remove any portion thereof belonging to the Railroad Company.

Ownership. *Fourth:* The portion of said sidetrack within the boundaries of the lands of the Railroad Company is its property. The portion of said sidetrack within the boundaries of the lands of Pennsylvania is the property of Pennsylvania. The hoppers, tell-tales and track scales are the property of Pennsylvania.

Other Uses. *Fifth:* The Railroad Company may use the sidetrack for general railroad purposes provided such use will not interfere with the reasonable use of the sidetrack for the traffic of Pattison.

The Railroad Company also expressly reserves the right to connect the part of the sidetrack located on its premises with other tracks for its own use or that of third parties, and in the event of any such connection and use there shall [fol. 66] be a reduction in Pattison's expense of maintenance, and an adjustment of Pennsylvania's original outlay for such jointly used portion of the sidetrack; said reduction and adjustment to be determined by the extent of such use.

Pennsylvania, Pittston and Pattison agree not to connect the sidetrack with any other track, or permit the use thereof by anyone not a party hereto, without the written consent of the Railroad Company.

Changes. *Sixth:* If at any time by reason of the order of any governmental authority or the Railroad Company's operating requirements, or otherwise, the Railroad Company shall relocate, reconstruct or change the grade of its tracks or other structures, or discontinue operation thereof, so as to require the relocation, reconstruction, change or removal, temporarily or permanently, of the sidetrack, it is agreed that the Railroad Company shall not be required to pay the cost of such relocation, reconstruction, change or removal of the portion of the sidetrack beyond the clearance point, and, as between the parties hereto Pennsylvania, Pittston, and Pattison each hereby waives all claims for any expense, loss or damage to its property or business resulting from the relocation, reconstruction, change or removal of the sidetrack.

Clearance. *Seventh:* Pennsylvania, Pittston and Pattison each agrees that it will not hereafter permit any of its objects or structures to be constructed over the sidetrack at less than twenty-one feet above the top of rail, or alongside of the sidetrack at less than six feet from the nearest rail, with the necessary additional clearance on curves.

[fol. 67]. *Eighth:* Pattison agrees to pay the entire cost of maintenance of dry walls adjacent to tracks "J," "K," "L," "M" and "T" as indicated by white shaded lines on blueprint hereinbefore referred to, and further agrees that

the Railroad company will not be responsible for the maintenance of said dry-walls and further that it will save harmless the Railroad Company from any and all loss, damage or injury to persons or property including the death of any person or persons occasioned by, arising out of or in any way connected with the existence or maintenance of said dry-walls.

Cancellation. *Ninth*: It is hereby mutually agreed by and between the Railroad Company and Pennsylvania that a certain agreement between them dated September 22nd, 1915 covering construction, ownership, operation and maintenance of 4665 feet of sidetrack at Coalberg, N. J., be and it hereby is terminated and cancelled as of the date hereof.

Liability. *Tenth*: It is understood that the movement of railroad locomotives involves some risk of fire, and Pittston and Pattison each respectively assumes all responsibility for and agrees to indemnify the Railroad Company against loss or damage to its property or to property upon its premises or premises leased or occupied by it, regardless of negligence of the Railroad Company, its officers or employes, arising from fire caused by locomotives operated by the Railroad Company on the sidetrack or in its vicinity for the purpose of serving Pattison, except to the premises of the Railroad Company and to rolling stock belonging to the Railroad Company or to others and to shipments in the course of transportation.

[fol. 68] Pittston and Pattison each severally and respectively agrees to indemnify and hold harmless the Railroad Company for loss, damage or injury from any act or omission of said Pennsylvania, Pittston and Pattison, their respective employes, or agents, to the person or property of said Pennsylvania, Pittston and Pattison, and their employes, and to the person or property of any other person or corporation, while on or about the sidetrack; and if any claim or liability, other than from fire, shall arise from the joint or concurring negligence of the firms or corporations executing this agreement, it shall be borne by them equally.

Inflammable Materials. *Eleventh*: It is mutually understood and agreed that no refinery or casinghead gasoline, benzine, nap-tha or any other inflammable liquid having a flash point below 30 degrees Fahrenheit shall be handled on

the sidetrack unless Pennsylvania, Pittston and Pattison shall sign the Railroad Company's form of Supplemental Agreement covering the handling of such inflammable material.

Termination. *Twelfth*: This Agreement may be cancelled and terminated by any party giving to the other at least sixty (60) days previous notice in writing; but, until so cancelled and terminated, shall continue in full force and effect. Pennsylvania, Pittston and Pattison agree not to assign this Agreement nor any rights thereunder without the written consent of the Railroad Company. The rights, duties and obligations of the respective parties hereto under this Agreement shall carry to and be binding upon their lessees, successors and assigns, respectively. The terms of this agrement, except insofar as they relate to the description and cost of the particular track herein provided for, [fol. 69] shall apply to any additions to or extensions or relocations of the sidetrack.

In Witness Whereof, the parties hereto have caused this Agreement to be executed in quadruplicate the day and year first hereinbefore written.

New York, Susquehanna and Western Railroad Company, By R. E. Woodruff, Vice President.

Witness as to the Railroad Company: C. E. Post. Pennsylvania Coal Company, By C. E. Denney, President.

Witness as to Pennsylvania: Geo. A. W. Achenbach, Assistant Secretary. The Pittston Company, By Michael Gallagher, President.

Witness as to Pittston: C. F. Hurd, Jr. Pattison & Bowns, Inc., By Lardner Pattison, President.

Witness as to Pattison: F. J. Schaeffer.

[fols. 76-77]

EXHIBIT P-10.

Pennsylvania Coal Company

Statement of Operation of Coalberg Coal Storage Plant from January 1, 1941 to December 31, 1943.

(1) Year	(2) 1941	(3) 1942	(4) 1943
Expenses:			
Payrolls	$16,890.62	$19,238.88	$21,669.37
Supervision (15%) P. C. Co.	2,533.60	2,885.85	3,250.41
Social Security Taxes:			
Old Age (1%)	168.92	190.59	211.08
Unemployment (3%)	506.74	571.77	633.25
Insurance	189.37	256.20	128.98
Taxes (R. E. Saddle River Twp.)	7,784.47	7,770.96	7,770.96
Materials, Supplies, Power, etc.	5,813.97	5,984.50	5,764.47
Public Liability & W/C Ins.	522.39	960.20	1,185.92
Independent Warehouses, Inc.:			
Thompson Salary (& Tax)	1,830.40	1,996.80	2,201.22
Storage Charges	708.69	135.98	437.69
Group Insurance Premium	20.40	27.97	22.08
Car Rentals (NYS&W)	10.00	52.75	
Legal Expenses			5,118.15
Total	$36,970.27	$40,072.45	$48,393.58
Credits:			
N. Y. S. & W. (Contr. 6/12/40:			
Salary Proportions	$2,238.00	$2,238.00	$2,238.00
Pumping Water	900.00	900.00	900.00
Sale of Track Screenings and Scrap	157.33	214.25	97.33
Total	$3,295.33	$3,352.25	$3,235.33
Net Expenses:	$33,674.94	$36,720.20	$45,158.25
Gross Tons Handled:			
In	138,109.06	33,480.07	13,625.15
Out	47,854.16	90,984.03	84,654.01
*Collections	$26,035.02	$18,342.82	$14,422.66
Operating Deficit:	$7,639.92	$18,377.38	$30,735.59

* Tariff Rate per ton, Jan. 1, 1941—Mch. 17, 1942, inclusive, 14c. in and 14c. out. Mch. 18, 1942—May 15, 1943, 15c. in and 15c. out. May 16, 1943—Dec. 31, 1943, 14c. in and 14c. out.
License fee on complained area amounts to:
$1.52 per ton on coal put in storage in 1943.
21¢ per ton on all 1943 in and out combined.

L. W. RADCLIFF
Vice President
and Comptroller.

2/16/44
M.

[fol. 78] EXHIBIT P-13

Township of Saddle River

An ordinance to amend an ordinance, entitled "An ordinance to license and regulate the licensing of various kinds of businesses, trades and occupations in the Township of Saddle River, in the County of Bergen, and to prohibit all persons and places unlicensed from acting, using or being used in said business, trades or occupations, and for such uses and purposes fixing fees and providing penalties for the violation thereof," adopted July 10th, 1931.

[fol. 79] Be it ordained by the Township Committee, of the Township of Saddle River, in the County of Bergen:

1. That section 6 of an ordinance entitled: "An ordinance to license and regulate the licensing of various kinds of businesses, trades and occupations in the Township of Saddle River, in the County of Bergen, and to prohibit all persons and places unlicensed from acting, using or being used in said business, trades or occupations and for such uses and purposes fixing fees and providing penalties for the violation thereof," adopted July 10, 1931, be and the same is hereby amended, to read as follows:

Section 6—The following enumerated businesses, trades, employments, vocations, occupations, or purposes, are hereby required to be licensed and the license fees therefore are hereby fixed as follows:

Itinerants, Vendors and Peddlers	9.00
Hawkers	9.00
Junk or Rag Dealers (per vehicle)	5.00
Push Cart, or Park Peddlers	9.00
Auctioneer	75.00
Traveling Shows	75.00
Circuses, per day	100.00
Outdoor Carnival, annual	500.00
Outdoor Carnival, one week or less	100.00
Milk Dealers, per wagon	9.00
Grocers, per wagon	9.00
Butchers, per vehicle	9.00
Bakers, per vehicle	9.00

Dealers in soft Beverages	9.00
Live Poultry Dealers	25.00
Bowling Alleys, per alley	1.00
Dance Halls	10.00

[fol. 80]

Motion Picture Houses	50.00
Pool and Billiard Parlors, per table	5.00
Ice Dealers, per wagon	9.00
Gas and Oil Stations, per Pump	5.00
Sale of Fire Works, per stand or store	25.00
Collectors of Butchers Refuse	10.00
Barber Shops, per chair	1.00
Min-ature Golf Courses or Driving Range, or similar amusement devices	25.00
Boarding Houses	15.00
Lodging Houses	15.00
Junk Shop	25.00
Junk Yard	25.00
Employment Agency	10.00
Public Garage	10.00
Exhibitions	75.00
Concerts, one week or less	25.00
Theatrical Performances, one week or less	25.00
Any other place of amusement	50.00
Rendering Plants	500.00

2. This ordinance shall take effect upon passage and publication in the manner required by law.

Jos. Gardiner, Township Clerk.

March 13-20 Fees $22.44.
3-9-34
3-23-34

[fol. 81] EXHIBIT P-14

Township of Saddle River

An ordinance to supplement an ordinance entitled "An ordinance to license and regulate the licensing of various kinds of businesses, trades and occupations in the Township of Saddle River, in the County of Bergen, and to prohibit all persons and places unlicensed from acting, using or being used in said business, trades or occupations, and for such uses and purposes, fixing fees and providing penalties for the violation thereof," adopted July 10th, 1931, as amended March 23rd, 1934.

Be it Ordained by the Township Committee of Saddle River, in the County of Bergen:

1. That the license fees for rendering plants, as fixed in Section 6 of the ordinance entitled "An ordinance to license and regulate the licensing of various kinds of businesses, trades and occupations in the Township of Saddle River, in the County of Bergen, and to prohibit all persons and places unlicensed from acting, using or being used in said business, trades or occupations, and for such uses and purposes fixing fees and providing penalties for the violation thereof," adopted July 10th, 1931, as amended March 23rd, 1934, be and the same is hereby fixed at One Hundred and Fifty Dollars ($150.00).

2. Except as herein modified, said Section 6 of said ordinance, as heretofore amended, and the license fees for the businesses, trades, employments, vocations, occupations or [fol. 82] purposes therein enumerated, shall remain unchanged and in full force and effect.

3. This ordinance shall be retroactive to January 1st, 1939, and shall take effect when passed and published in the manner required by law.

12-13-'40
12-27-'40

[fols. 83-123] EXHIBIT D-1

Anthracite

Our Prices for Pittston Coal, as authorized by the Office of Price Administration effective November 24, 1943 and until further notice, per net ton of 2,000 lbs. F. O. B. Mines with discounts allowed for cash in fifteen days from date of invoice, are shown on the opposite page.

All orders are accepted and shipments made subject to the conditions printed on the back hereof.

November 24, 1943.

Pattison & Bowns, Inc. Pittston Coal New York

Size	November 24, 1943 Prices per Net Ton	Cash Discount per Net Ton
Grate	$8.00	15¢
Egg	8.00	15¢
Stove	8.00	15¢
Chestnut	8.00	15¢
Pea	6.45	10¢
Buckwheat	4.80	10¢
Rice	3.85	5¢
Barley	2.85	5¢

Terms—Thirty Days, Net Cash

Quality Service

EXHIBIT P-12

I. C. C. No. D-1438
Cancels I. C. C. No D-1390
P. U. C.-N. J. No. 236
Cancels P. U. C.-N. J. No. 206

Erie Railroad Company ..... Tariff No. G. O. 2213-G

Wilkes-Barre & Eastern R. R. Co. ..... Tariff No. W. E. 1610-F
Cancels Nos. G. O. 2213-F, E. W. 5447 and W. E. 1610-E)

ERIE RAILROAD COMPANY

(Robert E. Woodruff and John A. Hadden, Trustees)

IN CONNECTION WITH

RAILROADS AS SHOWN ON PAGE 2

JOINT AND PROPORTIONAL TARIFF

Naming Rates in Cents Per Ton of 2,240 Pounds on

ANTHRACITE COAL

ANTHRACITE BRIQUETTES AND BOULETS, CARLOADS

Minimum weight marked capacity of car, except that when cars are loaded to cubical or visible capacity, actual weight, will apply. When a car of given capacity is ordered and a car of greater capacity is furnished, the minimum weight will be that provided for the car ordered, but not less than 80,000 pounds for open top cars (see note) and 45,000 pounds for box and stock cars.

NOTE—If it is found that the contents of a car weigh less than the minimum, the car must be examined by the Weighmaster or other designated representative of the carriers, and if the car has been loaded full, the shipment will be billed at the actual weight. Proper notation must be shown on the waybill why the longer minimum weight is used.

For capacity of cars, see Agent M. A. Zenobia's Official Railway Equipment Register, I.C.C.-R.E.R. No. 256 P.U.C.-N.J. -R.E.R. No. 256, or successive issues thereof.

ALSO

RULES GOVERNING STORAGE OF ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS AND HANDLING CHARGES IN CENTS PER TON OF 2,240 POUNDS IN CONNECTION T' EREWITH

AT

ROCHELLE PARK (COALBERG), N. J.

AS DEFINED IN REFERENCE ① ON PAGE 3

FROM STATIONS ON THE	TO
ERIE RAILROAD LACKAWANNA & WYOMING VALLEY R. R. NEW YORK, ONTARIO & WESTERN RY. WILKES-BARRE & EASTERN RAILROAD (As Shown on Page 2)	ROCHELLE PARK, (COALBERG) N. J. (As Shown on Page 5)

ISSUED JULY 11, 1940

EFFECTIVE AUGUST 12, 1940
(Except as otherwise provided herein)

Issued by W. P. VAN IDERSTINE, Chief of Tariff Bureau, Midland Building, Cleveland, Ohio

J. A. FERGUSON,
Coal Freight Agent,
Cleveland, O.

WM. H. STADELMAN,
Coal Traffic Manager,
Cleveland O.

File 6
File 1790

RECEIVED		
Month	Day	Year

(MADE IN U. S. A.)

J. E.

TABLE OF CONTENTS

	PAGES
Abbreviations, Explanation of	2
Participating Carriers, List of	2
Rates	5
Routes	5
Rules Governing Storage of Anthracite Coal, Anthracite Briquettes and Boulets and Handling Charges	3
Rules Governing Tariff:	
Application of Rates, Rule No.1	4
Carriers Routing, Rule No.7	4
Commodity Rates Applicable From Intermediate Points, Rule No.2	4
Demurrage, Rule No.5	4
Mixed Carload Shipments, Rule No.4	4
Reconsignment, Rule No.6	4
Terminal or Transit Privileges or Services, Rule No.3	4
Reference Marks, Explanation of	3
Stations From Which Rates Apply, Alphabetical List of	2
Stations From Which Rates Apply, Geographical List of	2
Station to Which Rates Apply	5

PARTICIPATING CARRIERS

CARRIERS	Concurrence Forms and Numbers I.C.C. FX	I.C.C. No.	For Rates See Pages
Lackawanna and Wyoming Valley Railroad Company	5	22	...
New York, Ontario and Western Railway Company (Frederic E.Lyford, Trustee)	4	84	...
New York, Susquehanna and Western Railroad Company (Walter Kidde, Trustee)	4	A-255	5
Wilkes-Barre and Eastern Railroad Company (Joseph P.Jennings, Trustee)	4	C-257	...

ALPHABETICAL LIST AND INDEX OF STATIONS FROM WHICH RATES APPLY

STATIONS	Railroad Located On	Index No.	STATIONS	Railroad Located on	Index No.	STATIONS	Railroad Located on	Index No.
Archbald....Pa.	NYO&W	34	Jenkins Jct....Pa.	W&E	23	Plains....Pa.	W&E	25
Avoca....Pa.	Erie	7	Jermyn....Pa.	NYO&W	33	Plains Jct....Pa.	Erie	9
Blakely....Pa.	W&E	14	Jessup....Pa.	Erie	4	Providence....Pa.	NYO&W	41
Carbondale....Pa.	Erie	12	Mayfield(D.&H. R.R. Tracks)....Pa.	Erie	5	Riverside Jct.Pa.	W&E	17
Carbondale....Pa.	NYO&W	31	Mayfield Yard....Pa.	NYO&W	32	Rocky Glen....Pa.	L&WV	28
Dickson....Pa.	NYO&W	38	Midvale....Pa.	L&WV	29	Scranton....Pa.	Erie	3
Dickson....Pa.	W&E	16	Minooka....Pa.	W&E	20	Scranton....Pa.	NYO&W	43
Dunmore....Pa.	Erie	2	Moosic....Pa.	W&E	21	Sibley Jct....Pa.	NYO&W	39
Dunmore....Pa.	L&WV	26	Olyphant....Pa.	NYO&W	37	Suscon....Pa.	W&E	18
Forest City....Pa.	Erie	10	Olyphant....Pa.	W&E	15	Throop....Pa.	NYO&W	40
Forest City....Pa.	NYO&W	30	Park Place....Pa.	NYO&W	42	Virginia....Pa.	L&WV	27
Hanley....Pa.	Erie	1	Peckville....Pa.	NYO&W	36	Winton....Pa.	NYO&W	35
Hillside Jct....Pa.	Erie	6	Peckville....Pa.	W&E	13	Yatesville....Pa.	W&E	24
Hillside Jct....Pa.	W&E	19	Pittston....Pa.	Erie	8			
Monesdale....Pa.	Erie	1-A						

GEOGRAPHICAL LIST OF STATIONS FROM WHICH RATES APPLY

Index No.	STATIONS	Index No.	STATIONS	Index No.	STATIONS
	ERIE R.R. Wyoming Division		W.& E.R.R. Via Jessup, Pa. Winton Branch		N.Y.O.& W. Ry. Via Riverside Jct., Pa.
1	Hanley....Pa.	16	Dickson....Pa.	30	Forest City....Pa.
1-A	Monesdale....Pa.	17	Riverside Jct....Pa.	31	Carbondale....Pa.
2	Dunmore....Pa.		W.& E.R.R. Via Hillside Jct., Pa. Main Line	32	Mayfield Yard....Pa.
3	Scranton....Pa.	18	Suscon....Pa.	33	Jermyn....Pa.
4	Jessup....Pa.	19	Hillside Jct....Pa.	34	Archbald....Pa.
5	Mayfield (D.&H.R.R. Tracks)....Pa.	20	Minooka....Pa.	35	Winton....Pa.
6	Hillside Jct....Pa.	21	Moosic....Pa.	36	Peckville....Pa.
7	Avoca....Pa.	23	Jenkins Jct....Pa.	37	Olyphant....Pa.
8	Pittston....Pa.	24	Yatesville....Pa.	38	Dickson....Pa.
9	Plains Jct....Pa.	25	Plains....Pa.	39	Sibley Jct....Pa.
	Jefferson Division		L.& W. V.R.R. Via Dunmore, Pa., or Pittston, Pa.	40	Throop....Pa.
10	Forest City....Pa.	26	Dunmore....Pa.	41	Providence....Pa.
12	Carbondale....Pa.	27	Virginia....Pa.	42	Park Place....Pa.
	W.& E.R.R. Via Jessup, Pa. Winton Branch	28	Rocky Glen....Pa.	43	Scranton....Pa.
13	Peckville....Pa.	29	Midvale....Pa.		
14	Blakely....Pa.				
15	Olyphant....Pa.				

EXPLANATION OF ABBREVIATIONS

&.....	And.
¢.....	Cent or Cents.
D.& H.....	Delaware & Hudson Railroad.
I.C.C.....	Interstate Commerce Commission.
Jct.....	Junction.
L.& W.V....	Lackawanna and Wyoming Valley Railroad.
N.J.....	New Jersey.
No.....	Number.
N.Y.O.& W..	New York, Ontario and Western Railway.
N.Y.S.& W....	New York, Susquehanna & Western Railroad.
Pa.....	Pennsylvania.
P.U.C.-N.J...	Board of Public Utility Commission, State of New Jersey.
R.E.R.....	Railway Equipment Register.
R.R.....	Railroad.
Ry.....	Railway.
W.& E.....	Wilkes-Barre and Eastern Railroad.

EXPLANATION OF REFERENCE MARKS

♦ Advance.
(R) Issued to meet Motor Competition.
(I) Rules Governing Storage of Anthracite Coal, Anthracite Briquettes and Boulets and Handling Charges.

Shipments of Anthracite Coal, Anthracite Briquettes and Boulets, in carloads, from points of origin on the ERIE RAILROAD, or connecting carriers as named herein, will be accorded the privilege of storage in stock piles of the ERIE RAILROAD at Rochelle Park (Coalberg) N.J., up to the capacity of the Stock Piles, under the following conditions, and at charges as provided in the following rules:

(a) APPLICATION FOR STORAGE SPACE.
Shippers must first ascertain from the Coal Traffic Department, Erie Railroad, 50 Church Street, New York, N.Y. whether storage space is available before making shipments to the Stock Pile. The Erie Railroad reserves the right as conditions require to designate the kind, grade or size of Anthracite Coal which may be stored in each of its storage piles and places.

(b) METHOD OF CONSIGNMENT.
Shipments intended for storage should be consigned to the transit party and be billed to the Stock Pile as destination and such information shown on shipping order.

(c) HANDLING CHARGES
The Erie Railroad charges for handling at Rochelle Park (Coalberg) N.J., which are to be assessed and collected at the time service is performed, will be as follows:
(1) Unloading from cars into Stock Pile.....14¢ per ton of 2,240 pounds.
(2) Reloading into cars for reshipment.....14¢ per ton of 2,240 pounds.

(d) TIME LIMIT.
The period of time allowed for the storage privilege and protection of the through rate from point of origin to ultimate destination shall be two (2) years from date of delivery at storage point, as shown on the inbound freight (expense) bill. The Erie Railroad reserves the right to require owners to remove their coal at the expiration of the two years period. Any coal which is not reshipped within two (2) years will lose the privilege of being reshipped at the through rates from point of origin to destinations beyond the storage yard and freight charges will be collected on the basis of the local rates in effect on the date same size of coal was originally shipped from the mines to Rochelle Park, N.J. and the local rates applicable from Rochelle Park, N.J. in effect at the time shipment is forwarded from storage to the ultimate destination, plus handling charges as shown in Rule C.

(e) RATES APPLICABLE TO AND FROM STORAGE.
Lawfully published rate from point of shipment to the Stock Pile, will be assessed. The balance of the through rate to ultimate destination will be assessed when reloaded and reshipped to final destination.

Shipments from storage will be waybilled at the difference in rate which was in effect in tariffs lawfully published and filed with the Interstate Commerce Commission on date of shipment from the mines to the ultimate destination and the rate collected on the coal when it moved into storage at Rochelle Park (Coalberg) N.J.

♦If coal is reshipped from Rochelle Park (Coalberg) N.J., to a destination taking lower rate from point of origin than rate collected to Rochelle Park (Coalberg) N.J., the rate in effect on date of shipment from point of origin to Rochelle Park (Coalberg) N.J., will apply.

The rates provided in this tariff to the storage yard do not apply for local delivery. The rate in effect to Rochelle Park, N.J. for local delivery, in accordance with Erie R.R.I.C.C.No.D-1301, Tariff No.G.O.2223-H, or successive issues thereof, will be charged and collected on any coal that may be taken from storage for local delivery.

If no joint through rate is published to final destination, the rate to be charged will be the published through rate from mines to a point to which a through rate is published, plus the local rate or rates beyond making the lowest combination.

(f) IDENTITY.
The identity of the Coal will not be preserved.

(g) RECONSIGNMENT.
No charge will be made for reconsignment, or change in the name of consignor, at Stock Pile.

(h) RECORDS.
The Erie Railroad will keep a record showing waybill reference, car initials, numbers and tonnage of all Anthracite unloaded into or reloaded from storage as follows:
Received:
Origin and weight of each size of coal separately.
Forwarded:
(1) By rail, showing size of coal of each carload (when size of coal is different from size placed in storage, the size of the original coal will also be shown.)
(2) By truck.
(3) By other means.

(i) INSPECTION.
The Erie Railroad reserves the right to make visual inspection, and laboratory test when it is deemed necessary, of all coal to be dumped, to insure a uniformity of quality; and to refuse to accept any coal for storage which is inferior in quality to that already in the storage pile.

(j) LOSS AND DAMAGE.
The Erie Railroad will not be responsible for loss, deterioration, or degradation due to handling, or due to damage by the elements at the storage plant.

(k) WEIGHTS.
The actual weights will be credited or debited regardless of the minimum carload weight on which charges are assessed.

(l) CANCELLATION AND ADJUSTMENT OF TONNAGE.
Tonnage inbound to Storage will be credited and tonnage outbound from storage will be debited based on the size of coal as shipped.

(m) WAYBILLS.
Waybills for all shipments from storage will bear notation "Accorded Storage Privilege at Coalberg".

(n) RESTRICTIONS.
Shipments will not be accepted under these rules for a station or point of delivery against which an embargo is in force except, however, those made under authorized permits are not subject to this condition.

(R) Expires with December 20, 1940, unless sooner cancelled, changed or extended.
♦ Effective December 21, 1940, unless sooner cancelled, changed or postponed.
(I) Lump, Grate, Range, Egg, Stove and Chestnut sizes.

EXHIBIT P-12

RULES GOVERNING TARIFF

Rule No.1. **APPLICATION OF RATES**

The rates named in this tariff will apply only to Rochelle Park (Coalberg), N.J., when for storage and re-shipment. When coal is re-shipped the rate applicable will be the balance of the through rate from original point of shipment to ultimate point of destination, as published in Erie R.R. tariffs on file with the Interstate Commerce Commission in effect on date of initial movement from point of origin.

If coal is reshipped from Rochelle Park (Coalberg), N.J. to a destination taking lower rate from point of origin than rate collected to Rochelle Park (Coalberg), N.J., the rate in effect on date of shipment from point of origin to Rochelle Park (Coalberg), N.J. will apply.

Rule No.2. **COMMODITY RATES APPLICABLE FROM INTERMEDIATE POINTS**

Subject to the provisions of notes 1,2,3 and 4 below, from any point of origin from which a commodity rate on a given article to a given destination and via a given route is not named in this tariff, which point is intermediate to a point from which a commodity rate on said article is published in this tariff via a route through the intermediate point over which such commodity rate applies to the same destination, apply from such intermediate point to such destination and via such route the commodity rate in this tariff on said article from the next point beyond from which a commodity rate is published herein on that article to the same destination via the same route.

Note 1.--When by reason of branch or diverging lines there are two or more "next beyond" points, apply the rate from the next point beyond (in this tariff) which on that article to the same destination via the same route results in the lowest charge.

Note 2.--If the intermediate point is located between two points from which commodity rates on the same article via the same route are published in this tariff, apply via that route from the intermediate point the rate from the next point in either direction which results in the higher charge. In applying this note, if there are two or more next beyond points due to branch or diverging lines, eliminate all such next beyond points except the point from which the lowest charge is applicable.

Note 3.--If the class rate on the same article via the same route from the intermediate point produces a lower charge than would result from applying the commodity rate under this rule, such commodity rate will not apply.

Note 4.--If there is in any other tariff a commodity rate on the same article from the intermediate origin point applicable over the same route to the same destination, the provisions of this rule are not applicable from such intermediate origin point.

Rule No.3. **TERMINAL OR TRANSIT PRIVILEGES OR SERVICES**

In the absence of specific provisions in this tariff to the contrary, shipments transported under this tariff will be entitled to such allowances and privileges and subject to such charges, rules and regulations of originating carriers parties to this tariff, for property while in their possession, and of any of the intermediate or delivering carriers parties to this tariff, for property while in their possession, as are provided in tariffs lawfully in effect and on file with the Interstate Commerce Commission as to Interstate Traffic, with the Canadian Transport Commission and with State Commissions covering traffic subject to their jurisdiction, for

Terminal or Transit Privileges or Services, including also

Car Rental	Elevation	Loading	Storage
Car Service	Floatage	Private Car Mileage	Switching
Cartage	Heater Service	Reconsignment	Transfer
Demurrage	Icing	Refrigeration	Transit Privileges
Diversion	Lighterage	Stop-off	Unloading
			Weighing

Rule No.4. **MIXED CARLOAD SHIPMENTS**

On mixed carload shipments of various sizes the highest rate published on any size contained in the car will be used on the entire consignment.

Rule No.5. **DEMURRAGE**

Shipments under this tariff will be governed by Car Demurrage Rules contained in Agent B.T.Jones' Demurrage Tariff No.4-T, I.C.C.No.3853 (Erie R.R.No.7-800-R), or Successive issues. While shipments are on connecting lines, rules and regulations of those lines will govern.

Rule No.6. **RECONSIGNMENT**

For rules governing reconsignment while on Erie R.R., N.Y.S.& W.R.R. and W.& E.R.R., see Erie R.R. (Lines East) I.C.C.No.D-1481, Tariff No.G.O.2226-H, S.&W.4044-H, W.& E.1669-H, or successive issues thereof. After delivery to connecting lines, shipments are subject to the rules and regulations of such lines when lawfully filed with the Interstate Commerce Commission. (See Exception).

Exception.--See Reference Mark Ⓓ, Rule g, Page 8.

Rule No.7. **CARRIERS ROUTING**

The rates named in this tariff will apply only via the routes and junction points authorized herein except that when in the case of pronounced traffic congestion (not an embargo), washout, wreck, or other similar emergency or through carriers' error, carriers forward shipments via other junction points of the same carriers or via the lines of other carriers parties to the tariff the rate to apply will be that specified in this tariff but not higher than the rate applicable via the route of movement.

Departure from the terms of the Amended Fourth Section of the Interstate Commerce Act is permitted by authority of Interstate Commerce Commission Fourth Section Order No.10600, of July 25, 1930.

EXHIBIT P-12

6.0.2213-6

STATION TO WHICH RATES APPLY AND RATES APPLICABLE THERETO

TO	Rates in Cents Per Ton of 2,240 Pounds		
	SIZES		
	④ Prepared	Pea	Smaller
Rochelle Park (Coalberg), ... N.J.	⑨ 230 ⑩ 250	⑨ 218 ⑩ 230	230

ROUTING INSTRUCTIONS

Rates shown herein will apply only via route shown below.

ROUTE

1.—Erie R.R. to Passaic Jct.,N.J.,N.Y.S.& W.R.R. to destination.

[fol. 126] EXHIBIT P-16

To the Township Committee of the Township of Saddle River, Bergen County, New Jersey.

The Pennsylvania Coal Company, a corporation of the Commonwealth of Pennsylvania, owner of certain lands and premises in the Township of Saddle River, Bergen County, New Jersey on which a coal storage plant is situated, and Independent Warehouses, Inc., a corporation of the State of Ney York, engaged in the business of storing goods for hire, the lessee of said lands and premises, which occupies and uses them for the storage of coal for hire, severally, object to and protest against the proposed ordinance entitled "An ordinance to regulate and license the business of the storage of personal property in warehouses engaged in the business of storing goods for hire and the place or premises in or at which said business is conducted and carried on, to prescribe fees for such licenses, and to provide penalties for the violation of this ordinance," said to have been introduced and passed on first reading at a meeting of the Township Committee held on the 13th day of January, 1943, on the grounds that said ordinance is wrongful, unlawful, unconstitutional and illegal.

Dated January 23rd 1943.

Pennsylvania Coal Company, Independent Warehouses, Inc. By Collins & Corbin, Attorneys.

[fol. 127]

Exhibit P-17.

Statement of coal in storage at Coalberg Storage Plant by sizes, in Net Tons as of the first of each month from Jan. 1, 1942 to Aug. 1, 1944.

		NET TONS							
		Stove	Chestnut	Pea	Buckwheat	Rice	Barley	Screenings	Total Net Tons
January	1, 1942	2,496.65	9,032.10	35,478.95	89,506.00	11,083.90	12,889.65		160,487.25
February	1, "	2,496.65	8,297.90	34,821.75	82,081.65	7,832.55	12,041.00	39.00	147,610.50
March	1, "	2,496.65	7,954.40	30,200.70	74,979.05	4,387.75	12,041.00	41.00	132,100.55
April	1, "	2,496.65	7,954.40	23,344.55	70,318.80	1,784.70	12,041.00	90.00	118,030.10
May	1, "	2,496.65	7,954.40	13,223.35	68,830.80	511.50	12,041.00	194.00	105,251.70
June	1, "	0	5,458.25	7,027.30	68,114.10	406.40	14,367.20	62.60	95,435.85
July	1, "	0	5,458.25	28.45	55,495.50	406.40	19,385.75	16.65	80,791.00
August	1, "	0	5,458.25	0	54,418.00	406.40	25,275.90	16.65	85,575.20
September	1, "	0	5,458.25	0	54,418.00	406.40	26,994.25	16.65	87,293.55
October	1, "	0	5,548.25	4,293.65	58,460.80	406.40	27,191.30	161.65	95,827.05
November	1, "	0	5,458.25	4,355.90	65,899.40	406.40	27,740.45	16.65	103,877.05
December	1, "	0	5,458.25	4,355.90	69,231.30	356.10	29,033.05	16.65	108,451.25
January	1, 1943		5,354.10	4,355.90	60,260.30	356.10	26,445.40		96,771.80
February	1, "		3,682.95	1,409.30	43,475.60	356.10	24,924.00		73,847.95
March	1, "		2,220.25	431.05	26,295.25	101.45	24,473.75		53,521.75
April	1, "		0	0	3,382.65	0	24,206.65		27,589.30
May	1, "		0	0	636.50	0	23,823.30		24,459.80
June	1, "		0	0	636.50	0	24,483.25		25,119.75
July	1, "		0	0	636.50	0	23,000.10		23,636.60
August	1, "		0	0	636.50	0	24,364.50		25,001.00
September	1, "		0	0	636.50	0	25,391.85		26,028.35
October	1, "		0	0	1,186.00	0	25,310.95		26,496.95
November	1, "		0	0	1,769.50	1,336.00	24,406.95		27,512.45
December	1, "		0	0	1,769.50	1,769.20	15,821.30		19,360.00
January	1, 1944				1,279.90	1,582.60	14,474.40		17,336.90
February	1, "				379.75	0	13,326.20		13,705.95
March	1, "				0	0	13,326.20		13,326.20
April	1, "				0	0	12,661.80		12,661.80
May	1, "				0	0	13,684.95		13,684.95
June	1, "				0	0	16,833.75		16,833.75
July	1, "				0	1,297.25	18,056.65		19,353.90
August	1, "				0	5,088.40	19,153.55		24,241.95

[fol. 128] EXHIBIT P-18

Pennsylvania Coal Company

Maximum prices established for Anthracite Coal, FOB transportation facilities at mines of Pennsylvania Coal Company per OPA maximum price Regulation No. 112 and amendments thereto.

	Broken to Chestnut Inclusive	Pea	Buck	Rice	Barley
April 1, 1942 to Jan. 9, 1943	$6.75	$5.25	$3.75	$2.90	$2.15
to Nov. 24, 1943	7.30	5.75	4.20	3.35	2.50
to Feb. 1, 1944	8.00	6.45	4.80	3.85	2.85
to March 1, 1944	8.45	6.90	5.25	4.30	3.30
to June 1, 1944	8.00	6.45	4.80	3.85	2.85
	7.85	6.30	4.65	3.75	2.75

Vice President & Comptroller.

8/16/44—UH

[fol. 129] **Depositions**

Transcript of stenographic notes of depositions of Francis J. Brust, Fred V. Lynn, Roy W. Radcliffe, David D. Jamieson, Thomas J. Snyder, John T. McCormack and James Thompson, witnesses on behalf of the prosecutors in the above entitled matters, taken by and before Louis Kabot, a Supreme Court Examiner of the State of New Jersey, at Room 2301, Raymond-Commeree Building, 1180 Raymond Boulevard, Newark, New Jersey, commencing at ten-thirty o'clock in the morning, E. W. T., on Monday, August 21, 1944, pursuant to order granting leave to take depositions.

Appearances:

Collins & Corbin, Esqs., by Robert J. Bain, Esq. (present), counsel for prosecutors Independent Warehouses, Inc. and James Thompson.

Hobart, Minard & Cooper, Esq., by Duane E. Minard, Esq. (present), counsel for prosecutors Pennsylvania Coal Company and Erie Railroad Company.

Chandless, Weller & Kramer, Esq., by Ralph W. Chandless, Esq. (present), counsel for defendants.

It is stipulated and agreed by counsel for the respective parties that the depositions in the above mentioned cases be taken stenographically before Louis Kabot, a Supreme Court Examiner of the State of New Jersey, and that the signatures of the witnesses to their depositions be waived. [fol. 130] It is further stipulated and agreed by counsel for the respective parties that the depositions be taken jointly in the two cases, to be used in both cases.

Mr. Chandless: This stipulation shall be subject to the defendants' right to object to the scope of the depositions and also the procedure, except as above stipulated.

Mr. Bain: Any and all objections to the depositions to be made during the taking of them.

Mr. Chandless: Yes, or by motion to strike.

Mr. Minard: On behalf of the prosecutors this statement is made. Prosecutors' depositions were taken before Nicholas W. Bindseil, Supreme Court Commissioner, on March 22 and March 23, 1944, but owing to Mr. Bindseil's illness and subsequent death a transcript of those depositions was never made. Prosecutors' depositions are now being taken over again within the confines of the original depositions. Is that right?

Mr. Chandless: That is right.

Mr. Minard (Continuing): So far as possible to follow from recollection.

Counsel for prosecutors desire to offer in evidence at this time certain exhibits which were offered on the original taking of the depositions before Mr. Bindseil, and marked by him as Exhibits P-1 to P-16, inclusive, respectively. Prosecutors desire to re-offer those exhibits at this time, and to have them again marked as exhibits.

(The papers referred to were received in evidence and marked Exhibits P-1 to P-16, inclusive.)

Mr. Chandless: The defendants have no objection to them going into evidence, except that they desire to cross examine [fol. 131] with respect to them, and by cross examination we mean cross examining the witnesses who were produced to prove them on the original hearing.

Mr. Bain: The witnesses will be produced.

Mr. Minard: Yes. They are all here.

Mr. Chandless: On behalf of the defendants and in respect to the intervening prosecutor Erie Railroad, I desire

to make a statement for the record or an objection to these proceedings.

On May 13, 1944 I wrote the attorney of the Erie Railroad as follows—

Mr. Bain: That does not refer to Mr. Minard or myself?

Mr. Chandless: This refers to the Erie Railroad.

Mr. Bain: You say that you wrote counsel for the Erie Railroad.

Mr. Chandless: I wrote to Duane E. Minard, Hobart, Minard & Cooper, 1180 Raymond Boulevard, Newark 2, New Jersey, as follows:

"Dear Mr. Minard:

"I have yours of May 9th, 1944. I conceive that the function of the Stipulation would be to reduce to writing what transpired before the Court."

On May 15, 1944, Mr. Minard replied as follows:

"After certain statements in the first eight paragraphs of your letter of the 13th, you asked to be advised whether that——"

Mr. Minard: Wait a minute. Are you going to put the letter in evidence?

Mr. Chandless: I am making a statement, and you can add anything that you want.

[fols. 132-154] Mr. Minard: Don't you see the obvious unfairness of attempting to put in your side of the correspondence and not mine?

Mr. Chandless: It is your letter that I am putting in.

Mr. Minard: Well, why don't you put it in?

Mr. Chandless: You can add to it anything you want.

Mr. Bain: I object to any statement on the record from writings. If the writings are a proper subject of statement on the record, then the writings ought to go in.

Mr. Chandless: Well, in order to save time I will put in the following:

Mr. Minard's letter of May 2, 1944.
My letter of May 4, 1944.
Mr. Minard's letter of May 9, 1944.
My letter of May 13, 1944.
Mr. Minard's letter of May 15, 1944.

My letter of May 19, 1944.
My letter of June 20, 1944.
And my letter of July 31, 1944.

[fol. 155] FRANCIS J. BRUST, called as a witness on behalf of the prosecutors, being duly sworn according to law by the Examiner, testified as follows:

Direct examination,

By Mr. Minard:

Q. Did you testify on the former depositions in this case on March 22, 1944?

A. I did.

Q. At that time did you present as Exhibit P-1 a map bearing that marking, which is entitled "Map of Coal storage Plant, Scale 1"=20', January 11, 1944, F. J. Brust, Engineer"?

A. The scale is 1"=200'.

Q. Was this map a reproduction of another larger map, of which that was the correct scale?

A. That is right.

Q. So this is a reduced facsimile of the map and not drawn to scale?

A. That is right.

Q. And the purpose of this map was to show the Coalberg property, and the character and location of various coal floors and equipment?

A. Yes.

Q. And did you, from the larger maps, make a box on this Exhibit P-1, which showed the total track area, total plant area, and the unused area, with the total number of square feet involved in the tracks, of various capital letter indications as they exist on Exhibit P-9, which is the track agreement between the Pennsylvania Coal Company and the Susquehanna Railroad Company?

A. That is correct.

Mr. Minard: Now, I offer this as a picture of the Coalberg plant, not as a map drawn to scale.

It has already been received in evidence and we will make the note of it here.

You may cross-examine.

[fol. 156] Cross-examination.

By Mr. Chandless:

Q. I think that on your previous examination you testified that the radius of individual piles of coal which are represented by the circles is 120 feet. Is that correct?

A. Did I say 120?

Q. That is what you said the last time.

Mr. Minard: Don't you take his word for it. You just rely on your own recollection.

A. Well, they are approximately 120.

Q. The radius is 120 feet?

A. You mentioned radius. In fact, we can tell you exactly how much they are.

Mr. Minard: Here is a map to scale so you can tell him if he wants to know. I don't want you to accept his recollection of what you testified to.

A. (Continuing): In fact, there are 123½.

Q. That is the radius?

A. That is what you asked for, yes, sir.

Q. And by piles you mean the full circles, two of which appear on each floor?

A. That is right. The smaller circles on that part (indicating) marked "floor."

Q. And those circles represent the piles of coal?

A. That is right, those are circles that represent the piles of coal.

Mr. Minard: When you say "piles of coal," is it coal or coal floors?

The Witness: That is right, piles on the floor.

Mr. Minard: If it is full?

The Witness: If it is full.

Q. I think you also testified on your previous examination that the radius of the floor, and by floor we mean [fol. 157] the circles marked Floor A, B, C, D and E, each 235 feet?

A. That is right; approximately 235.

Q. And I believe that you testified that the pile of coal piled on the circles, with a radius of 120 feet, each would have a height of 120 feet, is that right?

A. No, I didn't say that.

Q. You didn't testify to that the last time?

A. That would be possible if it was piled at a 45 degree angle. I don't remember saying it.

Q. Do you remember being cross-examined as to what would be the height of the piles of coal?

A. I have a recollection.

Q. You have a recollection of it?

A. Yes.

Q. Do you recall what you said would be the height of these piles of coal?

Mr. Bain: I object to that. The witness is entitled to be confronted by what he said.

Mr. Chandless: You know, Mr. Bain, it is a physical impossibility for me to confront him with his previous testimony because of the inability to write it up. I have a right to ask him whether or not he testified to that at that time.

Mr. Bain: Have you a note showing that he did so testify?

Mr. Chandless: Yes. I have a note right here. I have a note on all the witnesses.

Mr. Bain: Do you have a note to that effect? If you have a note to that effect, all right.

Mr. Minard: Let us see the note first.

Mr. Chandless: I have it right here. The witness can see it right here (indicating), "Francis J. Brust, Engineer, Pennsylvania Coal Company."

[fol. 158] Mr. Minard: That is wrong there. The witness wants to understand that he is testifying from his personal knowledge, and he does not have to support any figures that you present.

Mr. Chandless: But he can testify to what he knows to be the fact now. That is where we disagree. This testimony here is supposed to be a reproduction, in so far as it may be possible, of the witness's previous testimony.

Mr. Minard: But it is up to the witness to decide.

Mr. Chandless: Then, if it were not true I would have a right to say that the man made a different statement the last time he testified.

Mr. Minard: But you would have to confront him with the testimony.

Mr. Chandless: I will resort to whatever method I see fit, to contradict him.

Mr. Minard: Let us not waste any more time. The witness does not have to answer any more questions except of his personal knowledge.

By Mr. Chandless:

Q. Mr. Brust, you do recall testifying in respect to the height of the piles?

A. I remember something about height. I don't remember any figure that I gave you.

Q. You do recall that we spent a little time trying to get from you a calculation as to the height of these piles at that time?

A. I don't think it was on the calculation that we spent so much time.

Q. What was it that we spent the time on?

A. On the weight of coal. That is where we spent a lot of time.

[fol. 159] Q. That had a bearing on height. Didn't you say that the weight of coal would affect the height of the pile?

A. No.

Q. Didn't you testify on the previous hearing what the height of these piles would be if the pile was loaded to a capacity of 120 feet?

A. No, I don't remember saying that.

Q. What would you concede the height of the piles to be, if they are loaded to capacity?

A. If there were piles there the highest you could load them would be approximately 65 feet.

Q. You say 65 feet approximately?

A. Because they cannot be loaded higher than the trim.

By Mr. Minard:

Q. What is the trim?

A. That is the mechanical apparatus that loads the coal.

Q. That is the maximum height of the trim?

A. That would be on the bottom of the trim.

Q. That is the highest the trim could lift?

A. The coal would reach the trim. It could not go any higher, because that is a mechanical apparatus.

By Mr. Chandless:

Q. The dotted circles represent what?

A. Those are large piles.

Q. Those are larger piles?

A. Sure.

Q. What is the radius of those piles?

A. Approximately 210.

Mr. Minard: He is asking you about the piles. You can't build a pile with a railroad track running through it.

Mr. Bain: I assume he means the radius of the floor space or the amount occupied by the piles.

[fol. 160] Mr. Minard: That is incorrect also, because he would have to maintain the tracks.

Q. There would be a pile on each side, with a radius of 210 feet?

A. On each side?

Q. Of the track?

A. Yes.

Q. I don't think I understand what you mean by the radius.

A. Half the diameter.

Q. Half the diameter of the entire dotted circle?

A. Of each circle.

Q. Let us put it this way: If the piles represented by the solid circle, as distinguished from the dotted circles, were loaded to capacity, how many tons of coal would there be in each one of those piles?

A. In each one; on each pile?

Q. In each one of the piles represented by the solid circle.

A. If they were loaded to capacity?

Q. Yes.

A. Well that would vary according to the size of the coal, but it would be approximately between twenty and twenty-five thousand tons.

Q. And there are ten such piles, is that right?

Mr. Bain: That is the total as of January.

Q. There are ten represented on this map?

A. There are ten symbols representing piles on that map.

Q. That would mean that in those ten piles there would be between two hundred and two hundred and fifty thousand tons, provided they were loaded to capacity?

A. Yes, if they were loaded to capacity.

Q. Calling your attention to the dotted circles, what would be the capacity of each one of those?

A. In these larger ones?

Q. Yes.

A. I think they are about the same, except not so high.

[fol. 161] Q. You would say that they would be, each one, between twenty and twenty-five thousand tons?

A. Approximately.

Q. Do you count this as four piles or two piles?

A. Two piles (indicating); this is one and that is the other (indicating).

Q. So that you would have twelve piles altogether?

A. Twelve piles.

Q. With a total capacity of between 240,000 and 300,000 tons, is that correct?

A. That is correct.

Q. Those piles are the only portion of this yard which is used for the storage of coal, is that correct? There is no coal stored anywheres else except in those twelve piles that you refer to?

A. So far as I know those symbols on the map indicate where coal can be stored.

Q. Are you correct in your statement that there are only twenty to twenty-five thousand tons in each one of the dotted circles, or each half of the dotted circles?

A. In the whole circle. I did not speak about a half. I say the whole circle.

Q. On your previous examination you testified on that subject, didn't you?

A. I don't recall if I did or not, on the contents.

Q. You computed the ground area of this layout, didn't you? Those are your figures?

A. What do you mean by the ground area?

Q. Didn't you compute the ground area of the various layouts on this plan?

Mr. Chandless: Haven't we an exhibit here which was prepared by this witness? Isn't he the witness who prepared that?

Mr. Minard: We have two exhibits that were presented by Mr. Lynn, showing the ground area of the different uses of the plant.

[fol. 162] Mr. Chandless: They were not computed by this witness?

Mr. Minard: Well, I don't think so. Mr. Lynn; they were prepared under his supervision and he checked them over and put the exhibits in evidence. They are Exhibits P-2 and P-3.

Q. When did you last visit this yard or plant?
A. I think it was in April.
Q. April, 1944?
A. 1944.

Mr. Chandless: That is all.

Redirect-examination.

By Mr. Minard:

Q. You refer to the floor as having a radius of 235 feet. You were referring to these segments of circles that are different from the circles which constitute the floor of the coal pile, weren't you?
A. That is right.
Q. And your radius is the radius of the machinery operating to fill those piles?
A. Of the loader?
Q. Of the loader.
A. Yes, sir.
Q. So that the coal is not piled in this segment of a circle, but is piled on floors within the complete circles themselves?
A. That is right, in those smaller circles (indicating).
Q. You were asked whether these piles are the only places used for stowing coal. That is true, as to the actual placement of the coal?
A. As far as I know.
Q. But other parts of this property are used in the operation of storing coal, are they not, including tracks, machinery, buildings, and all that sort of thing?
A. I don't quite understand you.
Q. The necessary duties of carrying on this storage operation requires additional land for tracks and other purposes not within these particular circles?
A. Oh, that is correct.

Recross-examination.

By Mr. Chandless:

Q. And those tracks, as I understand it, are also used by the New York, Susquehanna & Western Railroad for certain purposes?
A. I think that is part of the exhibit there, isn't it?

Mr. Minard: Yes, it is. That is correct.

Q. In other words, those tracks are not exclusively for this yard, are they?

A. That is marked on the exhibit, just what all the tracks are used for.

Q. I am asking you, they are used for other purposes by the New York, Susquehanna & Western Railroad, aren't they?

A. Not that I know of.

Q. What is it that you are talking about, that is marked on the exhibit?

A. I wonder if we can look at the exhibit.

Mr. Minard: Yes. It is all on here (indicating), and all on Exhibit P-9, too.

A. (Continuing:) In this block, in the lower left-hand corner, we endeavor to show who uses the tracks. Whether it is actually used exclusively by the plant and the railroad? By the plant and the railroad. I think that would answer your question.

Q. By the tracks being used exclusively by this plant, you mean that the tracks are used for the purposes of bringing in the cars from which the coal is unloaded?

A. The coal cars, that is right.

[fol. 164] Q. What else is at this plant aside from the loading machinery, these arms or derricks which take the coal and put it in the pile, and the tracks and the piles? What else is there?

A. In that area there?

Q. Yes.

A. Some unused ground.

Q. What else?

A. Did you itemize the tracks and the yard?

Q. I am asking you what physically there is.

A. Well, land.

Q. In other words, there are the piles of coal, the derricks or arms which load and unload the coal, and there are the tracks?

A. That is right.

Q. Mr. Minard referred to machinery. Is there any other machinery there?

A. Outside of what is there in connection with the actual unloading of coal, you mean?

Q. Yes.

A. I don't know. I don't operate that.

Q. You went down on the ground to make this plan, didn't you?

A. Yes.

Q. And if there had been anything else there you would have set it forth in your plan?

A. We tried to mark on there everything we saw there in relation to the storage of coal.

Mr. Chandless: That is all.

Redirect examination.

By Mr. Minard:

Q. There are buildings there?

A. These buildings (indicating).

Q. Is there an Erie freight office in that building? You didn't attempt to show me the buildings on this map?

A. No. The only buildings I have shown, I have shown the office building, but this building is in relation to——

Q. Where is that office building?

A. That one (indicating).

[fol. 165] Mr. Chandless: It refers to a building of about what size? What would you say is the size of that building?

The Witness: Of that office building?

Mr. Chandless: Yes.

Mr. Minard: Here is a house (indicating). That is called a house there (indicating.) There are several buildings here shown, 1, 2. 3, 4 and 5; four engine houses and one pump house.

The Witness: That is in relation to the storage of the coal.

Mr. Minard: And there is a locomotive house up there (indicating).

By Mr. Chandless:

Q. By that you mean a pump house?

A. A pump house.

By Mr. Minard:

Q. And there is a locomotive house there?

A. Yes.

By Mr. Chandless:

Q. That is for engines of the New York, Susquehanna & Western?

A. I don't know who uses it.

Q. The pump house that you refer to, what is that used for?

A. Used for water.

Q. And the water, that is used for what?

A. I am not too familiar with the operation of that plant.

Q. The water, that is used to wash the coal?

A. It can be used to wash coal.

Mr. Minard: We have exhibits showing that, already in.

[fol. 166] Q. The coal is washed at this plant?

A. I don't know. I don't know much about the operation of that plant, as I mentioned before.

Q. How big did you say the office building is?

A. I didn't say.

Q. You can give us the dimensions, can't you?

A. Yes.

Mr. Minard: Which is the office?

The Witness: Here (indicating).

A. (Continuing:) The answer is no, I can't give you the dimensions of it.

Q. Can't you scale them?

A. It doesn't show on there.

Mr. Chandless: All right.

Direct examination.

By Mr. Bain:

Q. Mr. Brust, some of this machinery is operated by electric power, isn't it?

A. I think it is.

Q. Do you know whether or not there are power lines from various parts of the property to carry the power?

A. There are power lines there, but I haven't got that located on any map.

Q. You don't know where they are, but you know that there are power lines there?

A. Yes.

Q. Outside of these circles indicated as storage piles?

A. Yes.

Q. The power lines are outside of the circles covering various parts of the land, within the yellow confines of the map?

A. That is correct.

Q. For the purpose of operating the plant would you have to walk to the different parts of the plant outside of these circles shown on that map?

A. Yes.

Q. A watchman has to make the rounds, look outside, all the time?

A. Yes, he does.

Mr. Bain: That is all.

[fol. 167] Cross-examination.

By Mr. Chandless:

Q. The loading or unloading, the operation of the plant, is accomplished by the different power houses which appear alongside the railroad tracks, the little square, is that right?

A. That is the engine house.

Q. That is the engine house?

A. Yes.

Q. How big are those engine houses?

A. Well, they are different sizes. Which one do you want?

Q. They seem to me to be all about the same.

A. That is a different size than this one here (indicating).

Q. About how big are they?

A. The smaller one is about 25 by 35.

Q. They appear within circles, is that right?

A. No, they don't.

Q. They appear within the floor, don't they?

A. No, sir. It is floor.

Q. They lay between the floor and the railroad tracks, is that correct?

A. That is correct.

Q. They are operated by power?

A. Yes.

Q. So far as you know, it comes in on power lines along the railroad tracks?

A. I didn't say along the railroad tracks.

Q. So far as you know the power lines travel along the railroad tracks?

A. I don't know.

By Mr. Bain:

Q. Is the plant lighted at night when it is operated after dark?

A. Yes.

Q. Are there electric poles all over the plant?

A. I don't know where the poles are located, but in order to light up the plant they would have to have them distributed.

Q. They are in the plant outside of the floor space occupied by coal piles?

A. Yes, they would have to be.

[fol. 168] By Mr. Chandless:

Q. Where are they?

A. Outside of the floors.

Q. Point them out on the map.

A. I can't point them out on the map because I didn't have them located.

Q. You are just guessing?

Mr. Bain: He knows they are not under the coal.

A. I didn't guess, because I said I don't know where they are located, but they are there, because I know they are there.

Fred V. Lynn, called as a witness on behalf of the prosecutors, being duly sworn according to law by the Examiner, testified as follows:

Direct examination.

By Mr. Minard:

Q. Mr. Lynn, I show you a tabulation dated March 17, 1944, and marked Exhibit P-2, N. W. B., by Mr. Bindseil's marking, and ask you if that was prepared under your supervision?

A. It was.

Q. What is your connection with the Pennsylvania Coal Company?

A. Secretary and real estate agent.

Q. How long have you been in charge of real estate and taxes and assessments of the Coal Company?

A. About eighteen years.

Q. Exhibit P-2, does that correctly show the land and improvement assessment areas, uses and taxes, in columns 1 to 7, inclusive, and also the land distribution of track occupancy of the Coalberg plant?

A. It does.

[fol. 169] Mr. Minard I re-offer that as Exhibit P-2.

(The paper referred to was received in evidence and marked Exhibit P-2.)

Q. Did you also have prepared under your supervision a statement headed, "Coalberg, N. J. 1944," marked Exhibit P-3, N. W. B., showing the tracks used by the storage plant, the tracks used exclusively by N. Y. S. & W. Railroad Company, the tracks used jointly by New York, Susquehanna & Western Railroad and the storage plant, with a notation that the New York, Susquehanna & Western is entitled to use all tracks?

A. Yes.

Q. Was that compilation made from an agreement of July 13, 1931, marked Exhibit P-9 in this case?

A. It was, yes.

Q. And those figures correctly show the areas of the lettered tracks, according to that agreement?

A. Yes, it does.

Mr. Minard I re-offer that in evidence as Exhibit P-3.

(The paper referred to was received in evidence and marked Exhibit P-3.)

Q. On P-2, where did you get that information about the assessed rate per square foot of land?

A. I got that from Mr. W. H. Rinke.

Q. Who is he?

A. He was secretary of the Board of Assessors in 1933. I think I got it from him on June 13th, at Rochelle Park, Saddle River Township.

Q. Have you been familiar with that assessment ever since?

A. Yes.

[fol. 170] Q. Has there been any change in the rate of that assessment?

A. No change at all.

Q. Or in the amount of the assessment shown here?

A. Just the same. That is for the land. When you say that there has been no change, there has been a change in the improvement valuation.

Q. This shows improvements $113,400. What year does that speak of?

A. You might say that is around 1942 or 1943.

Q. Had there been any change in this on March 17, 1944, when this was made?

A. No.

Q. Now, prior to 1940, that is, to and including 1939, this plant was operated by Pattison & Bowns, wasn't it?

A. That is right.

Q. And the coal in storage belonged to them and was their private property?

A. It was.

Q. And it was assessed by Saddle River Township as their personal property?

A. Yes.

Q. Do you remember what the assessment on the coal was, we will say, from 1939?

A. From my recollection, of course, it was on the same basis as our assessment, and it remained the same for a good many years. I would say around $193,000.

Q. Then, when they gave up the yard at the beginning of 1940 or late in 1939, there was no more of their coal there, was there, that is, except in storage under the Independent Warehouses?

A. I wouldn't know about that.

Mr. Miard: All right, go ahead, cross-examine.

Cross-examination.

By Mr. Chandless:

Q. Since what year is it that you have not paid any personal property tax on coal?

A. Well, we never paid any.

[fol. 171] Q. Since what year is it that no one paid any personal property tax on coal up there?

A. That I wouldn't know either, except from the records, as it appears.

Q. What years was that?

A. I couldn't answer that because I was never interested in that.

Q. Since 1940 you have paid no personal property tax on coal, or no one has paid any personal property tax on coal?

A. I would say offhand that is the correct date.

Q. Those taxes were about $12,000 a year?

A. I couldn't answer that, except hearing it discussed here.

Q. You knew it affected your company, didn't you?

A. No, not on the coal, I wasn't interested in the coal.

Q. You were not interested in the coal?

A. No.

Q. The stock of the Pennsylvania Coal Company is owned by the Erie Railroad, isn't it? Is that correct?

A. I would say that is correct.

Q. And your company is which one? I get these companies confused.

A. Pennsylvania Coal Company.

Q. You are the Pennsylvania Coal Company?

A. That is right.

Q. The Independent Warehouses rents this yard from you at a dollar a year, is that correct?

A. They lease it.

Mr. Bain: The lease speaks for itself.

The Witness: That is in the record.

Q. That is correct, isn't it?

Mr. Bain: The lease speaks for itself.

Q. Is there any secret about that?

A. No.

Mr. Bain: The lease is in evidence.

[fol. 172] Q. You are not ashamed of the fact that you rent it to them at a dollar a year?

Mr. Bain: Just a minute. I object. The lease is in evidence.

Q. You previously testified, Mr. Lynn, in the tax certiorari case, didn't you?

A. In the what?

Q. In the tax certiorari case.

Mr. Bain: I object, unless the witness is confronted with his testimony.

A. I don't believe so.

Mr. Chandless: May I have the record on that? Wasn't he there the first time we met, Mr. Minard?

The Witness: No. You met me a long time ago. I don't believe so, no.

Mr. Minard: He didn't testify in the case.

Mr. Chandless: He didn't testify in that?

Mr. Minard: No.

Mr. Chandless: I think that is all.

Roy W. Radcliffe, called as a witness on behalf of the prosecutors, being duly sworn according to law by the Examiner, testified as follows:

Direct-examination.

By Mr. Minard:

Q. Mr. Radcliffe, did I prepare for your consideration certain interrogatories, for your examination in these cases?

A. Yes, sir.

Q. And did you go over those to see whether they were in substantial accord with the questions that you were asked at the last hearing in this matter in March?

A. I did.

[fol. 173] Q. Did you write out the answers as nearly as you could recollect from your testimony, and reduce those questions and answers to writing and submit them to me for consideration at this hearing?

A. I did.

Q. Now then, what is your connection with the Pennsylvania Coal Company?

A. Vice-president and Comptroller in charge of the Accounting and Treasury Departments of the company.

Q. How long have you been connected with that company, and in what capacities have you served?

A. Over twenty-five years. I have served in various capacities, including that of auditor and secretary and treasurer.

Q. In what State is the Pennsylvania Coal Company incorporated?

A. The Commonwealth of Pennsylvania.

Mr. Chandless: I object to the witness referring to typewritten questions and answers. He is over twenty-one and appears to have average intelligence, and, certainly, he needs no memorandum to refresh his recollection.

Mr. Minard: You certainly know that we could submit this whole testimony on interrogatories, and we have been merely trying to stay within the limits of the previous hearing.

Q. Were is its principal office?

A. Dunmore, Pennsylvania.

Q. What is its business?

A. It owns, operates and leases anthracite mines in Lackawanna and Luzerne Counties in Pennsylvania. The Pennsylvania Coal Company mines and prepares anthracite coal from certain of its properties not under lease [fol. 174] to others, all of which it sells f.o.b. the mines to purchasers who ship it for their own account to various destinations.

Mr. Chandless: I object to the witness reading this, and that objection applies to every one of these answers which he reads from a memorandum.

Mr. Minard: We will agree that it applies to all of them.

Q. Does the Pennsylvania Coal Company own a storage plant in Saddle River Township?

A. Yes.

Q. When was that land acquired by the Pennsylvania Coal Company?

A. During the year 1901.

Q. For what purpose was it acquired?

A. It was purchased to provide a location convenient to tidewater markets for the storage of excess production

of coal during certain seasons of the year, in readiness for deliveries during the winter months when the demand normally exceeds production, and for emergencies caused by mining or transportation interruptions, bad weather or other conditions.

Q. What are the economic advantages of such storage facilities?

A. Anthracite coal is used mostly as a domestic fuel and during the winter months the demand is normally greater than the quantity currently produced at the mines. Anthracite coal is stored for the following reasons:

(a) Anthracite does not normally have a steady market for all sizes during all of the months of the year.

(b) Storage is necessary because of the lack of demand [fol. 175] at times for certain sizes of coal then being currently produced. The percentage of the various sizes produced through anthracite breakers can be controlled only within certain limits. Smaller sizes are produced regardless of every effort made to produce larger sizes which are ordinarily in greater demand. Therefore, storage is necessary in order that the current market may be supplied with the sizes which are then in demand. Otherwise the lack of demand for certain of the sizes during low consumption periods would cause more interruptions of operation than at present and serious deficiencies in supplies might easily result during winter months when demands for domestic fuel are at the maximum and when the demand is normally in excess of current production.

(c) The handling and loading and unloading of coal is more difficult in the winter seasons and may be done much more expeditiously in mild summer months. Coal is stored to insure, as far as possible, a constant supply for consumers.

(d) During World War I, and during the present World War, the demand for anthracite coal at tidewater has exceeded the available supply, and stored coal has provided a supplemental reserve.

(e) The need for coal storage has been demonstrated particularly during the present war, as shown by the following figures for the Coalberg plant.

I have got three years' tabulation, 1941, 1942 and 1943.

	1941	1942	1943
Gross Tons stored:	138,109.06	33,480.07	13,625.15
Gross Tons removed:	47,854.16	90,984.03	84,654.01

[fol. 176] These figures indicate that the war demands for coal at New York tidewater and elsewhere were so great that it was impossible to build up the stock piles as usual in 1942 and 1943, and also that except for a reserve supply at Coalberg the present shortage of anthracite coal would have been consideratly greater.

This is true of coal storage plants located on other railroads.

Q. Under normal conditions, are facilities for storage-in-transit for coal necessary to the ordinary course of the business of mining, transporting and distribution of anthracite coal?

A. Yes. In addition to the above mentioned reasons, there are others:

(a) Storage of coal in-transit in a public warehouse provides a supply to dealers and consumers who buy coal in advance for winter use, because they can hold the coal in commercial storage and finance the purchasees, if desired, by negotiable warehouse receipts, in the same manner that excess production of grain, foodstuffs or other seasonal commodities are stored and financed for use during seasons of no, or inadequate, production.

(b) Avoiding the necessity of car storage, and affording prompt unloading and release of railroad cars for the benefit of shippers.

Q. Is the practice of storage-in-transit for coal generally followed by the railroads and the coal shippers of the country?

A. Yes. It is the general practice and has been for years on all coal-carrying railroads, and with dealers and users of large quantities of coal. Such facilities are necessary competitive elements of coal transportation and sales.

[fol. 177] Q. What equipment has the Coalberg plant?

A. Equipment for loading, unloading and storage of coal.

Q. Since the land was acquired and the plant was constructed how has it been operated?

A. It was operated and used only for the storage of anthracite coal. On January 1, 1930, the Pennsylvania Coal Company leased its mines in Pennsylvania and the Coalberg plant to the Pittston Company, which company directly or through Pattison and Bowns, a subsidiary of The Pittston Company, operated the Coalberg plant for the storage of anthracite. On December 7, 1938, The Pittston Company surrendered the Coalberg plant to the Pennsylvania Coal Company.

At that time the Pennsylvania Coal Company was selling all of its coal f.o.b. mines. Therefore, the Pennsylvania Coal Company had no use for the storage facilities at Coalberg.

As of February 25, 1939 the Pennsylvania Coal Company agreed to operate the Coalberg plant for, and on behalf, and at the expense of the Trustees of the Erie Railroad Company, as a public service facility for shippers of prepared anthracite coal on Erie lines. The terms of that agreement, which is still in operation, are set forth in a written agreement dated July 10, 1939.

Q. I show you Exhibit P-4, with Mr. Bindseil's initials on it, the agreement just referred to. Is that a correct copy of it?

A. July 10, 1939, that is it.

Mr. Minard: I re-offer that in evidence as Exhibit P-4.

(The paper referred to was received in evidence and marked Exhibit P-4.)

[fol. 178] Q. Proceed. Go ahead with the description of the agreement.

A. To carry that agreement into effect, the Pennsylvania Coal Company, on June 20, 1939, leased the Coalberg plant and equipment to Independent Warehouses, Inc. on terms and conditions and for the purposes described in a written lease of that date.

Q. I show you Exhibit P-5, marked by Mr. Bindseil, and ask you if that is the agreement just referred to?

A. That is it.

Mr. Minard: I re-offer that as Exhibit P-5.

(The paper referred to was received in evidence and marked Exhibit P-5.)

Q. Proceed with the agreement.

A. Concurrently with the execution of that lease the Pennsylvania Coal Company made an agreement with Independent Warehouses, Inc., the terms and purposes of which are set forth in a written agreement of that date.

Q. That is May 24, 1940, isn't it?

A. No. That is June 20th. The supplement is dated May 24th. There were two leases dated the same date.

Q. I show you Exhibit P-6, with Mr. Bindseil's initials on it, and ask you if that is the agreement last mentioned?

A. That is right.

Mr. Minard: I re-offer that as Exhibit P-6.

(The paper referred to was received in evidence and marked Exhibit P-6.)

Q. Proceed.

A. A supplement to that agreement was executed on May 24, 1940.

Q. I show you Exhibit P-7, previously introduced and marked with Mr. Bindseil's initials, and ask you if that [fol. 179] is the supplemental agreement just mentioned?

A. Yes.

Mr. Minard: I re-offer that in evidence as Exhibit P-7.

(The paper referred to was marked Exhibit P-7.)

Q. Is the Coalberg plant still operated in accordance with those agreements and leases?

A. Yes.

Q. Are there any other existing agreements respecting the Coalberg plant?

A. There are two other existing agreements. An agreement dated June 12, 1940, between the Trustee of the New York, Susquehanna & Western Railroad and the Pennsylvania Coal Company for operating pumps and furnishing water for locomotives, and for billing, weighing and reporting on cars at Coalberg for the New York, Susquehanna & Western Railroad.

Q. I show you an agreement of that date marked Exhibit P-8 by Mr. Bindseil, and ask you if that is the agreement last mentioned?

A. That is right; that is correct.

Mr. Minard: I re-offer that in evidence as Exhibit P-8.

(The paper referred to was received in evidence and marked Exhibit P-8.)

Q. What is the other agreement that you mention?

A. An agreement dated July 30, 1931, between the New York, Susquehanna & Western Railroad, Pennsylvania Coal Company, The Pittston Company and Pattison & Bowns, Inc., covering the ownership, use, maintenance and operation of tracks at the Coalberg plant.

[fol. 180] Q. I show you an agreement of that date marked Exhibit P-9, with Mr. Bindseil's initials on it, and ask you if that is the agreement last mentioned?

A. That is it.

Mr. Minard: I re-offer that in evidence as Exhibit P-9.

(The paper referred to was received in evidence and marked Exhibit P-9.)

Mr. Minard: While I am on this I am going to ask a question that I had not submitted before.

Q. When did The Pittston Company and Pattison & Bowns go out of that agreement?

A. December 8, 1939, I believe it was.

Q. And since that time it has continued in operation as between the Pennsylvania Coal Company and the New York, Susquehanna & Western Railroad Trustee?

A. That is correct.

Q. Is the Coalberg plant suitable for any use other than the storage of coal?

A. It is not.

Q. Has the plant ever been used to your knowledge for any local or intrastate use?

A. No. It has always been and is now used exclusively for handling interstate shipments of coal, except the services we render to, and the tracks used exclusively or jointly by, the New York, Susquehanna & Western Railroad, and they are also services for the commerce of that railroad.

Q. Prior to February 25, 1939, and while the Coalberg plant was operated as a private storage facility, was the coal in storage assessed and taxed by Saddle River Township?

A. Yes, it was assessed each year, including 1939, and the taxes were paid by owners of the coal.

[fol. 181] Q. After the year 1939 was the coal in storage assessed and taxed by the Township?

A. Yes, but the assessments and taxes for 1940 and 1941 were contested on the ground that, since June 20, 1939, the coal was personal property stored in a warehouse of a corporation engaged in the business of storing goods for hire, and was therefore exempt from taxation under New Jersey law. The exemption was sustained and the assessments and taxes were set aside by the New Jersey Supreme Court on October 15, 1942. That decision was later affirmed by the Court of Errors and Appeals by opinion dated May 13, 1943.

Q. When did you learn of the ordinance of Saddle River Township to license the Coalberg storage plant and the storage business conducted there?

A. Between its introduction on January 13, 1943 and its adoption on January 25, 1943, we were informed of it by our attorneys and they were instructed to oppose it.

Q. Is there any other storage business in Saddle River Township subject to this ordinance?

A. Not to my knowledge.

Q. What is the effect of the ordinance on the Coalberg plant?

A. The Coalberg plant comprises 67.25 acres, or 2,929,410 square feet. The ordinance provides an annual license fee of ¾ of a cent "for each square foot of the total ground area of the place or premises • • • in or at which said business is conducted or carried on."

Since there is nothing in the ordinance limiting the area to be computed to the actual area occupied by stored coal, buildings and equipment, it might be construed by the Township officials to apply to the entire area of the property. In that case the annual license fee would be $21,970.57. Such an annual license fee, or any considerable part of it, would be absolutely prohibitive.

[fol. 182] Regardless of how the fee is computed the plant could not be operated as a transportation facility under such a tax burden. It would have to be discontinued.

The complaint on which Independent was convicted alleges the conduct of the business without a license on premises designated as "Block 106—D" of the assessment map. That parcel contains 2,730,296 square feet. At ¾ cents per square foot, the annual license fee on that parcel would amount to $20,475, which is the exact amount of the assessed valuation of that parcel.

Applied to 13,625.15 tons of coal put in storage, and 84,654.01 tons removed from storage in 1943, the annual license fee on that parcel shows the following rates per ton:

On the tons put in storage	$1.50 per ton.
On the tons taken out of storage	.24 per ton.
On combined in and out tonnage	.21 per ton.
The total gross revenue for storage and handling is only	.28 per ton.

Since land area, as a basis for assessment of this license fee, has no relation to the volume of business, tons in storage, or gross or net earnings, it is arbitrary and unreasonable, and the increased cost could not be absorbed nor passed on to the consumer. The application of this ordinance to the Coalberg plant would probably have the effect of closing it.

Q. How are the expenses of operating the Coalberg plant met?

A. Aside from the income derived from the services rendered to New York, Susquehanna & Western Railroad, which are deducted as credits from the gross expense of operating the plant, the only source of revenue to meet the public storage of coal is the railroad tariff charges to shippers of 14 cents per gross ton when the coal is put in [fol. 183] storage and 14 cents per gross ton when the coal is re-shipped out of storage. Between March 18, 1942 and May 15, 1943, this charge was 15 cents per gross ton in and 15 cents per gross ton out.

Q. Do you have charge of the accounts of the Pennsylvania Coal Company showing all expenses and the tonnage handled, for the purpose of determining the revenues from the operation of the Coalberg plant?

A. Yes. I submit a statement dated Februrary 16, 1944, entitled "Pennsylvania Coal Company, Statement of Operation of Coalberg Storage Plant from January 1, 1941 to December 31, 1943."

Q. I show you Exhibit P-10, with Mr. Bindseil's initials on it, which is that statement offered in evidence at the previous hearing, and ask you if that is it?

A. That is it.

Mr. Minard: I re-offer that exhibit in evidence as Exhibit P-10.

(The paper referred to was received in evidence and marked Exhibit P-10.)

Q. Does the Pennsylvania Coal Company own any coal stored at Coalberg?

A. No.

Q. Are there ceiling prices or other Governmental regulations on anthracite coal?

A. Yes.

Q. I show you, in reference to Governmental ceiling prices, a statement which you prepared, dated under date of August 16, 1944, entitled "Pennsylvania Coal Company, Maximum Prices Established for Anthracite Coal f. o. b. Transportation Facilities at Mine, Pennsylvania Coal Company, per OPA Maximum Price Regulation Number 112 and Amendments Thereto," and ask you if you prepared that statement?

A. I did.

[fol. 184] Q. Does that show when certain prices went into effect?

A. It does.

Q. They continue in effect until the next subsequent date when a new price is shown?

A. That is correct.

Q. Those are the official OPA prices at which purchasers buy this coal from you, which they store at Coalberg?

A. That is correct.

Mr. Minard: I am going to interrupt you long enough here to offer this exhibit as P-18.

Mr. Chandless: I object on the ground that it is not within the scope of the testimony given by the witness in the previous hearing.

Mr. Minard: It is in rebuttal of your testimony on coal prices, your witness Faust.

Mr. Chandless: I object on the further ground that the hearing in this matter was closed, and this is only for the purpose of reproducing the testimony which was adduced at the previous hearing. This is something new that is interjected at this time.

Mr. Minard: You offered the wrong prices, and we have a right to correct them.

(The paper referred to was received in evidence and marked Exhibit P-18.)

Q. Now, returning to the interrogatories, what are the present market conditions affecting supply and demand for anthracite coal?

A. The demand is in excess of production.

Q. What is the present and probable future effect of supply and demand conditions upon the quantity of coal [fol. 185] in the stock piles at Coalberg?

A. Until the war is over, and probably for some time thereafter, production is apt to lag behind demand.

Q. Has any department or agency of the Federal Government issued any rulings regarding the status of employees of the Coalberg plant?

A. Under date of December 8, 1941 the General Counsel of the Railroad Retirement Board ruled that the employees of the Coalberg Storage plant were under the Federal Railroad Retirement and Railroad Unemployment Insurance Acts, the same as railroad employees engaged in Interstate Commerce.

Q. I show you a photostatic copy of that letter, marked Exhibit P-11, with Mr. Bindseil's initials, and ask you if that is a correct photostatic copy?

A. That is it.

Mr. Minard: I re-offer that as Exhibit P-11.

(Paper referred to was received in evidence and marked Exhibit P-11.)

Q. How many persons are now employed at the Coalberg plant?

A. Six.

Q. How many were employed there at the time of the taking of these depositions in March?

A. Ten.

Q. Who owns the capital stock of the Pennsylvania Coal Company?

A. The Erie Railroad Company owns all of the outstanding capital stock of the Pennsylvania Coal Company.

Q. Now, Mr. Radcliffe, I show you a statement entitled "Statement of Coal in Storage at Coalberg Storage Plant by Size in Net Tons, as of the 1st of Each Month, from January 1, 1942 to August 1, 1944," and ask you if you [fol. 186] prepared that statement?

A. I had it prepared.

Q. And it shows exactly what the title states, is that right?

A. That is correct.

Mr. Minard: I offer this in evidence as Exhibit P-17.

Mr. Chandless: I object on the ground that it is not within the scope of the witness's previous testimony, and that the hearing was closed, and, consequently, the exhibit is not evidential at this time.

Mr. Minard: In answer I say that this is rebuttal to testimony of witnesses offered by the Township, attempting to compute certain values on hypothetical quantities of coal, and it seems to be advisable to put in evidence the actual quantities of coal in storage, in order to deal with those hypothetical computations.

Mr. Chandless: You had a statement of the amount of coal in storage?

Mr. Minard: No, we didn't.

Mr. Chandless: Is it different?

Mr. Minard: We never put one in.

Mr. Chandless: This witness himself testified here.

Mr. Minard: No, he didn't.

Mr. Chandless: As to the quantity of coal in and out.

Mr. Minard: Well, that is different. That did not relate to any date.

Mr. Chandless: He gave the years.

(The paper referred to was received in evidence and marked Exhibit P-17.)

Mr. Minard: Cross-examine.

[fol. 187] Cross-examination.

By Mr. Chandless:

Q. Mr. Radcliffe, you have read your answers to your testimony; the answers which you have given here today you have read from a paper that was prepared by Mr. Minard, is that correct?

A. I have read part of my testimony from a record which I have prepared myself after consultation with my attorney in Scranton.

Q. What part didn't you read?

A. The part that it wasn't necessary for me to read.

Q. But there were parts of your testimony that it was necessary for you to read?

A. There were parts of my testimony which it was necessary for me to read.

Q. Can you tell us generally what those parts were which it was necessary for you to read?

A. Parts relating to dates and figures in general, which I couldn't possibly carry in my head.

Q. Didn't you read the answers in respect to the setup of the Pennsylvania Coal Company and the purpose of the business and how the business functions? Didn't you read all of that?

A. I read part of it.

Q. Why was it necessary for you to read that?

A. Well, there are certain dates that I couldn't keep in my mind.

Mr. Chandless: I move that the witness's testimony be stricken out on the ground that it is not properly taken. He used a paper to refresh his recollection, without there being anything shown to warrant the use of such paper.

By Mr. Minard:

Q. Mr. Radcliffe, the paper to which you referred for detailed or technical information is a paper which you [fol. 188] prepared and sent to me with your letter of August 18, 1944, according to my request that you compile the data in accurate detail and be prepared to testify to it in accordance with certain interrogatories which I submitted to you? Is that right?

A. That is correct.

Q. What you have referred to today is what you wrote yourself and sent to me for consideration?

A. That is correct.

Mr. Chandless: And Mr. Minard changed it?

Mr. Minard: No, I didn't change a word.

The Witness: No, sir.

Mr. Chandless: Why was it necessary to send it to Mr. Minard?

The Witness: I returned it to him as a matter of record. Mr. Minard I asked him for it.

By Mr. Chandless (continued):

Q. Did you get it from him originally?

A. No.

Q. You say this was August, 1944, is that correct?

Mr. Minard: That is the date it was sent to me.

Q. You testified in the previous hearing?

A. Yes.

Q. Is your testimony here today the same as at that previous hearing?

A. To the best of my knowledge it is.

Q. You had your answers all prepared in written form at the previous hearing too?

A. That is correct.

Q. Did you compare these answers with the answers that you gave at the previous hearing?

A. Yes, sir.

[fol. 189] Q. So, what was the need of these communications back and forth between counsel and yourself, if there were no changes in your previous testimony? Did you change any of your previous testimony, since you previously testified?

A. Not to the best of my knowledge.

Mr. Chandless: I will repeat my motion, that his testimony should be stricken out.

Q. The factual situation at the Saddle River plant has been the same for years, hasn't it, the physical setup?

Mr. Bain: For how many years do you mean? I object on the ground that it is indefinite.

Q. For the past ten years, the physical setup?

A. What do you mean, for the past ten years, the physical setup?

Q. You told us all about how this plant operated. Now I am asking you whether or not——

A. The plant structure and the equipment that they have now is substantially the same as it has been for a number of years.

Q. It has been the same since 1913, is that correct?

A. I believe it is.

Q. The corporate setup is the same now as it was in 1941, isn't it?

A. What do you mean by corporate setup?
Q. The setup of these various corporations.
A. Yes.

Mr. Minard: You are referring now to the Erie and the Independent and the Pennsylvania Coal Company?

Mr. Chandless: The various corporations which are involved in this case.

[fol. 190] Mr. Minard: I think they ought to be specified, and I don't think the witness ought to answer unless he has them specified.

Q. Pattison & Bowns is controlled by United States Distributing Corporation, isn't that correct?
A. I can't answer that.
Q. You offered in evidence Exhibit P-11?
A. That is correct.

Mr. Minard: That is a letter he received from somebody else. He didn't write it.

Q. United States Distributing Corporation is controlled by The Pittston Company, isn't that correct?
A. I can't answer that.
Q. The Pittston Company is controlled by the Virginia Transportation Company, isn't that correct?
A. I have no knowledge on that.
Q. The Virginia Transportation Company is controlled by the Chesapeake & Ohio Railroad, isn't that correct?
A. I can't answer that.
Q. You do know that the Pennsylvania Coal Company is controlled by the Erie Railroad?
A. That is correct.
Q. In other words, you are what officer of the Pennsylvania Coal Company?
A. Vice-President and Comptroller.
Q. You do know that you are controlled by the Erie Railroad Company? That is what is meant by control, ownership of your stock?
A. That is correct.
Q. But you don't know that the Erie Railroad Company is controlled by the same people as Pattison & Bowns and The Pittston Company?
A. They are not.

Mr. Minard: They are not. They went through reorganization and washed all those fellows out.

[fol. 191] Q. Then I understand that your Exhibit P-11 is incorrect?

Mr. Minard: No.

A. Exhibit P-11 is an opinion of the General Counsel of the Railroad Retirement Board.

Mr. Minard: The only purpose of P-11 is to show that this plant and the employees are under the Federal Laws, because it is engaged in a transportation service. That is all that is for.

Mr. Chandless: You are also bound by your exhibits.

Q. You testified in the tax certiorari matter, didn't you?

A. I believe I did. I believe I was here.

Q. Now, at that time I think you described the operation of this plant and told us that this coal was shipped in to await orders for future delivery.

Mr. Minard: I object to the question. That is the only testimony he has ever testified to in that case (indicating). Here is the testimony (indicating).

Mr. Chandless: I am asking him a question. He can answer the question yes or no.

Mr. Bain: What is the question?

Mr. Minard: That time refers to the tax case, and if you will refer to the hearings in March of this year——

Q. Did you testify to that at that time?

Mr. Minard: At what time?

Q. In the hearing in the tax certiorari case?

[fol. 192] Mr. Bain: I object on the ground that he is entitled to be confronted with the testimony given.

Mr. Chandless: Let him testify.

Mr. Bain: No, I object.

Mr. Minard: I am going to let the witness examine the record, and if he finds that he did, then to read what he testified to, and if he finds he didn't he can answer the question no. He can examine the record to see what it is.

Mr. Chandless: This man is over twenty-one years of age. He is an intelligent witness and he can state whether he did so testify.

I will withdraw the question.

Q. Why is this coal shipped into Coalberg?
A. For purposes of storage.
Q. Why do they store it there?
A. For different purposes.
Q. Well, tell us the purposes.
A. Well, to be held for future use.

Mr. Bain: Isn't that what most storage it for?

Q. How long is the coal normally there?
A. That varies.
Q. Give us the various dates?
A. I can't give you that.

Mr. Bain: Is that as of the present time, a year ago, or ten years ago?

Q. What is the average period of time that the coal is in there?

Mr. Bain: During what period. I object unless the period is specified.

[fol. 193] Q. Can you answer the question?
A. What was the question?
Q. The average period of time that the coal remains there after shipment in there?
A. I can't. That would vary.
Q. What was it in 1941?
A. I couldn't tell you.
Q. The charge is made to unload the coal there of 14 cents per ton, isn't that correct?

Mr. Minard: I object to that. The tariff is in evidence and it speaks for itself.
Mr. Chandless: I am cross-examining the witness.
Mr. Minard: He didn't testify to that on direct.
Mr. Chandless: Yes, he did testify to that.
Mr. Minard: The tariff will speak for itself.
Mr. Bain: You put in the fourteen without mentioning the fifteen.

Q. Isn't that correct?
A. Yes, that is correct at the present time.
Q. At one time it was 15 cents a ton?
A. That is correct.
Q. That is the charge for unloading the coal?

Mr. Minard: I object to that. That is not correct. That is for the storage and unloading, and you know it, and the tariff is in evidence, which shows it. I don't want you to nail the witness down to something which is not so.

A. The tariff describes the services performed for the rate. I am not familiar with the tariff.

[fol. 194] Q. Who is this 14 cents a ton paid to?

A. I don't know. I think it is paid—I am pretty sure it is paid under the tariff of the Erie Railroad.

Q. Then 14 cents a ton is the charge to re-load it, is that correct?

A. That is correct.

Mr. Minard: Wait a minute. That is a part of the tariff charge.

Q. Now, the coal may remain at that yard for two years and then be re-shipped without any new rate being charged against it? That is a continuation of the old rate? Isn't that the system?

A. I am not familiar with the details on that.

Mr. Minard: The tariff so provides.

Mr. Chandless: That is admitted?

Mr. Minard: Certainly. That is a through rate from point of origin to final destination.

Q. Now, I think you testified today that the yard was operated for the purpose of keeping a stock on hand as a supply when the mines might be closed. Isn't that correct?

A. That is correct.

Q. And to accumulate a supply to meet greater orders than the mines are able to fill at the time cold weather might come in, is that correct?

A. That was another reason given, yes.

Q. How often do you run up against those kinds of situations? The coal business is seasonal.

A. To a certain extent it is.

Q. In other words, the demands are heavier in the cold weather?

A. That is right.

Q. So the yard is loaded up in the summertime, is that right?

A. Not always, normally.

Q. Give us the normal conditions. That is, what you [fol. 195] mean by that. In other words, the coal is shipped in in the late spring and during the summer and held there for winter orders?

A. It is shipped in when there is no demand for certain sizes.

Q. And you know, as a matter of fact, that without any increase in the railroad rate it can be held there a second year? Isn't that true?

A. Well, I am not familiar with the tariff.

Q. You don't mean to say that in this business, which is entirely dependent on this setup, you can't tell us about the tariff?

Mr. Bain: I object to the question on the ground that it assumes a fact that is not in evidence, being entirely dependent on the coal pile. That is just nonsense.

Mr. Minard: This is just only a plaything.

Q. You are not familiar with that setup at all? You don't know how it operates?

A. I am not familiar with the operation at all, generally speaking.

Q. You don't know how long the coal stays there? You just know the normal system; is that right?

A. That is correct.

Q. You put a number of agreements into evidence here today, didn't you?

A. Yes.

Q. In one of which the Erie Railroad assumes all the costs of operation, isn't that correct?

A. Yes.

Q. For the purpose of getting the coal business?

A. I don't know for what purpose.

Q. Doesn't the agreement so state?

Mr. Bain: I object on the ground that the agreement speaks for itself.

[fol. 196] Q. You are Comptroller of the company and you don't know what was put in that agreement which is in evidence?

A. We have a thousand agreements, and it is impossible to carry them all in my head.

Q. Isn't that in the agreement which was put in evidence?

Mr. Bain: I object on the ground that the agreement speaks for itself.

Q. Do you want to look at it? You know it is in there.

A. No, I don't.

Mr. Bain: I object to the question again.

Q. Now, in the tax certiorari case you found that you did testify, didn't you?

A. I testified in this particular case here.

Q. Referring to your testimony at Page 39; do you find your testimony on Page 39?

A. Yes.

Q. At that time I showed you a letter from Pattison & Bowns and asked you whether or not it refreshed your recollection. Isn't that correct?

A. Yes, sir.

Q. You said at that time that Pattison & Bowns had no authority to say that you operated the plant?

Mr. Minard: Wait a minute. Read your answer there.

A. (Reading:) "No. I had nothing to do with this. I don't know anything about it. I was never connected with Pattison & Bowns."

Q. What is the next? Go on, if you will.

A. That is the end of my answer.

Mr. Minard: That is the end of his answer.

[fol. 197] Q. "So you say, then, that the prosecutor, Pattison & Bowns, had no authority to say that you people operated that plant?" And the answer is what?

A. (Reading:) "I don't know anything about that."

Q. Now, as a matter of fact, Pattison & Bowns were controlled by the same people as you were? That is right?

A. That is not right.

Q. Didn't the Railroad Retirement Board find that is so?

Mr. Bain: I object to it.

A. No. The Railroad Retirement Board did not find it so.

Mr. Bain: The question is entirely improper.

Q. You offered in evidence Exhibit P-11 didn't you, when you just testified a little while ago?

A. Yes, sir.

Q. Now, when you testified in the tax certiorari proceedings you didn't tell us anything about this agreement with Erie, did you?

Mr. Minard: They were not in issue.

Mr. Bain: The question is objected to on ground that it is incompetent, irrelevant and immaterial. The examination is on the previous testimony now. It has nothing to do with this case. It is just a question that has no effect.

A. The answer is no.

(At this point a recess was taken for lunch.)

[fol. 198] Afternoon Session

Roy W. Radcliffe resumed the stand and testified further as follows:

Cross-examination (continued).

By Mr. Chandless:

Q. No mention was made of these agreements in that proceeding at any time, was there?

A. Not to my knowledge.

Q. I call your attention to Exhibit D-1, which appears to be the price list of Pattison & Bowns, and ask you whether you can tell us if that price list is correct in every detail?

Mr. Minard: I object to that. That is not his price list.

Mr. Chandless: If he knows.

A. Do you want me to tell you whether or not it is the OPA ceiling price in effect on that date?

Q. Whether that is the price list of Pattison & Bowns.

A. I am not an officer of Pattison & Bowns. I don't know.

Q. You don't know?

A. No.

Q. Are those the OPA ceiling prices in effect on that date?

Mr. Minard: That would not apply because these are Pattison & Bowns' prices, and all he knows is mine prices.

A. Those are the OPA ceilings in effect on that date generally.

Q. At Saddle River Township?

A. At the mines, f. o. b. transportation facilities.

Mr. Minard: You are referring now to what exhibit?

[fol. 199] Mr. Chandless: I am referring to Exhibit D-1.

Mr. Minard: That is not so.

Mr. Chandless: Let the witness testify. His answer was that it is.

The Witness: They are the maximum prices established for anthracite coal f. o. b. transportation facilities at mine.

Q. In other words, Exhibit D-1 is the same as P-17, is that right?

A. That is correct.

Mr. Minard: So far as that date is concerned.

Q. Of course, onto this price goes the cost of transportation from the mine, mine to Saddle River Township? Is that correct?

A. That is correct.

Q. That is about how much a ton?

A. I don't recall.

Q. And there is also the Government tax on each ton?

A. Whatever costs there are added to this f. o. b. mine price, any further costs.

Q. What is that Government tax?

A. I don't know.

Q. It is four cents a ton?

A. I don't know.

Q. There was never any license applied for, for any area of Saddle River Township?

A. I don't know.

Mr. Minard: I thought that was what you convicted these people for.

Q. You don't know?

A. That is correct.

Q. You never applied for a license for that area where the coal was stored?

Mr. Minard: He just said he didn't know.

[fol. 200] A. I don't know.

Mr. Chandless: I just want to get it on record.

Q. You testified that it would cost you how much money if you applied for this license?

Mr. Bain: If who applied for the license? The Pennsylvania Coal Company?

Mr. Chandless: This witness testified that it would cost a given sum of money for this license fee, and that would be prohibitive and would put them out of business. I am asking him whether that is so, if he did so testify.

The Witness: I did not.

Q. Didn't you compute the amount of license fee that was chargeable in this case?

A. I did not, and I didn't say it would put us out of business.

Q. Your words were that you would have to discontinue the plant?

A. That is correct.

Q. If you applied for a license for the area where coal appears on Exhibit P-1, as subject to be stored, that would be a license for what area?

A. I don't understand your question.

Q. You know that Exhibit P-1 is the layout or diagram of the yard which your company owns in Saddle River Township, is that right?

A. Is that the map?

Q. Yes. How many square feet are involved in that area where coal is actually being stored, according to P-1?

A. I can't answer that.

Q. Isn't it a fact that it is 630,000 square feet?

A. I can't answer that.

Q. Would you say that 630,000 square feet is wrong?

A. I don't know.

[fol. 201] Mr. Minard: He said he couldn't answer.

Q. So you don't know how many square feet are necessary to store the coal?

A. That is correct.

Q. If you got a license for 630,000 square feet your license fee would be about one-third of what was normally paid for property tax, is that right?

Mr. Minard: I object to it as irrelevant.

A. I don't know.

Q. About $12,000 a year was paid in personal property taxes on coal in Saddle River Township?

Mr. Bain: I object to the question on the ground that it assumes a fact that is not true.

Q. About $12,000 in taxes was paid on coal up to 1939, is that right?

A. That is in the statement there.

Mr. Minard: He didn't say they paid any taxes.

Q. You said they were paid?

Mr. Minard: Taxes were paid by the owners of the coal.

Q. Those taxes amounted to about $12,000 a year, is that right?

Mr. Minard: How does he know?

A. Yes.

Q. About $12,000 a year?

A. I think it is approximately $12,000. The statement is there.

Mr. Minard: Do you want the exact amount?

[fol. 202] Mr. Chandless: It is already in the record.

Mr. Minard: What are you padding the record for?

Mr. Chandless: I want to find out whether the witness is trying to help us or confuse us; if he admits that the personal property tax is $12,000.

Mr. Minard: He doesn't do anything of the kind.

Mr. Bain: I don't think it ever reached $12,000 there. I think it was up to $11,350, something of that sort.

The Witness: That statement is in there.

Q. You compiled a lot of figures or figures were compiled under your direction with respect to areas at this yard, weren't they?

A. With respect to areas?

Q. Those are your exhibits that you offered in evidence as to the areas, the tracks and so on?

A. No, sir.

Q. You are familiar with those figures, I mean? You don't know whether these figures are correct or incorrect?

A. I do not.

Q. You never gave any consideration to applying for a license for the area actually used for the storage of coal?

A. Not to my knowledge.

Q. You would not say that would be a whole lot less than the personal property taxes which had heretofore been paid?

A. I can't answer that question.

Q. This charge of 14 cents a ton which is paid there, that charge has no relevancy to the length of time that the coal remains up there, has it?

A. I am not familiar with the tariff. I can't answer that.

[fol. 203] Q. What do you understand that is?

Mr. Minard: The tariff speaks for itself and it is in evidence.

Q. As far as you know, then, there is no charge made for coal remaining a month, six months, a year, or five years?

A. I have no knowledge.

Q. You have no knowledge?

A. No.

Q. A considerable part of the coal at this yard is sold in the northern section of New Jersey, isn't that correct?

A. I don't know that, either.

Q. You would not say it is not so?

A. I can't answer that. None of the coal belongs to the Pennsylvania Coal Company.

Q. You know enough about the coal business to know that Pattison & Bowns does business with pretty nearly all the coal dealers in northern New Jersey?

A. I don't believe that, I can't answer that question.

Q. You don't know?

A. I never had any access to any Pattison & Bowns' sales records.

Q. The year 1941 was a subnormal year, isn't that correct?

Mr. Bain: With respect to what do you mean, Mr. Chandless?

Mr. Chandless: So far as the coal business is concerned.

Mr. Bain: So far as the coal stored at the plant, do you mean?

Q. In your previous testimony, when you testified here before, you testified that the year 1941 was a year below normal so far as business went, is that correct?

Mr. Minard: I object to that question. There is no record that he testified to that.

[fol. 204] Q. Yes, no, or I don't know. I suppose that is the answer.

A. What do you mean by "business"?

Q. Coal business.

Mr. Bain: Mined or sold?

Q. You were having your troubles in 1941, weren't you?

A. What do you mean, troubles?

Q. I think you testified on direct-examination now of being troubled because of the war, in the coal business.

A. I didn't testify there was considerable trouble.

Mr. Bain: Trouble in getting enough coal in to supply the demand in the Metropolitan District.

A. The supply is subject to the demand at the present time.

Q. Is that trouble?

A. No, I wouldn't say that is trouble.

Q. That condition was true in 1941 also, isn't that so?

Mr. Minard: What condition?

Q. That the demand exceeded the supply?

A. That is correct.

Q. Of course, the same thing is true of 1942 and 1943?

A. That is true.

Q. Consequently the figures on P-10, covering 1941, 1942 and 1943, do not represent normal conditions, do they?

Mr. Minard: In what respect?

Mr. Bain: The amount of coal they held at any particular time at the plant? The amount of coal mined?

[fol. 205] Q. The years 1941, 1942 and 1943 were not normal years so far as the coal business went, were they?

Mr. Bain: Are you speaking of coal mined, coal put in storage, coal stored?

Q. So far as your business of the Pennsylvania Coal Company was concerned?

Mr. Bain: Their business is mining coal. Is that what you mean? If so, that is entirely irrelevant.

A. I wasn't storing any coal in any one of those years.

Q. I didn't say you did. You know something about the coal business?

A. Yes, sir.

Q. You told us that 1941, 1942 and 1943 were subnormal years.

A. No, sir, I didn't.

Mr. Bain: You said that certain figures showed an abnormality.

Q. In those years the demand exceeded the supply, isn't that correct?

A. That is correct.

Q. By "supply" you mean what?

A. By supply I mean the ability of the producers to mine coal.

Q. Consequently, P-10 does not reflect three years of normal conditions?

Mr. Minard: I object to it unless you specify what normal conditions you refer to. Are you talking about mining?

Mr. Chandless: He knows what I mean; where the business is able to supply the demand.

A. I still don't understand your question. I am not hedging. I want to answer your question to the best of my ability.

[fol. 206] Q. The statement P-10 shows that 13,625.15 tons of coal came in during the year 1943?

A. That is correct.

Q. And 84,654.01 went out?

A. That is correct.

Q. Simple mathematics tells us that you could not continue to do business that way, could you, because there is more going out than is coming in? Apparently I have to lay down some simple mathematics.

Mr. Minard: That is not their business.

Q. Is that correct?

A. The Pennsylvania Coal Company is in the business of mining and selling coal. It has no connection at all with the amount of coal unloaded or reloaded at the Coalberg Storage Plant.

Q. You told us that a number of times. Will you tell me something about the coal business? Say that you have a

coal yard existing at Saddle River Township, and there are 13,000 tons that come in and 84,000 tons go out, would you say that is a normal, abnormal or subnormal year?

Mr. Bain: With respect to what? All that the question raises is the necessity for storage.

Q. Is that the way the yard is ordinarily operated?

A. The yard is operated for the purpose of storing coal when the supply is in excess of the demand.

Q. That means that you have to ship in as much or more coal than you ship out, isn't that true?

A. No, that is not true.

Q. How do you ship it out unless you ship it in?

Mr. Bain: That is what storage is for, my dear man.

[fol. 207] Q. By storing it? Right?

A. I can read you part of my testimony. That is all covered.

Q. You know more about the coal business than I do.

A. Yes, sure.

Q. Let me have a little of that information.

A. I am perfectly willing to tell you anything I am able to tell you.

Q. You take care of a condition like that by storage, right?

A. What condition?

Q. When they deliver and ship out 84,000 tons, when only 13,000 tons come in?

A. The tonnage in and out is shown on this exhibit.

Q. The out on this exhibit is what?

A. 84,654.01.

Q. For the three years it is what, out?

A. Altogether?

Q. Yes.

A. Around 220,000 tons.

Q. And what came in?

A. Around 180,000.

Q. You shipped out how many tons more than you shipped in?

A. I don't know. It is in there.

Mr. Bain: It is a matter of subtraction.

A. (Continuing:) About 40,000.

Q. You had coal in storage there, didn't you?

A. Coal in storage at all times during this three-year period.

Q. You had 40,000 tons beginning 1941?

A. Not necessarily. Beginning 1941 we had in excess of that.

Q. This statement does not show the amount of coal on storage there?

A. It does not.

Q. It does not show how much coal was on storage at the end of 1943, does it?

A. It does not.

Q. What would you say is a normal year for the amount of coal to come into Coalberg, the amount to be shipped in?

A. I couldn't say.

[fol. 208] Q. Your engineer testified that the capacity of the yard is between 240,000 and 300,000 tons. At certain times of the year you reach capacity there, in a normal year, don't you?

A. We have not reached capacity for a good many years.

Q. So these three years do not reflect normal years?

Mr. Minard: It is the same old question.

Q. Do they or don't they?

A. Well, I can't say what a normal year is.

Q. A year where the demand exceeds the supply.

A. What might have been a normal year ten years ago would not hold true today.

Q. Isn't your difficulty today because of the war conditions, the shortage of labor, and a great many factors that go into limiting your production?

A. Just the same as it does every other business man. I don't know what you mean by difficulties.

Q. You have told us that your business is not normal today; that the demand exceeds the supply. That is not normal, is it?

A. Do you mean the business of mining coal?

Q. The business of selling the coal. You mine it and sell it, don't you?

A. Mine the coal and sell the coal.

Q. Do you say that is a normal condition, where the demand exceeds the supply?

A. Well, it might be.

Q. When was the last time that you had conditions like that in the coal business, like the present conditions?

A. Well, I don't recall, but we have oftentimes been in the position of being way behind with our orders, like we are now, in the case of extremely cold weather.

[fol. 209] Q. That is for a limited period of time?

A. That is for a limited period of time.

Q. You have been in this present condition for some three or four years?

A. That is right.

Mr. Minard: What condition are you referring to?

The Witness: Demand in excess of supply.

Q. All of which means that the amount of coal presently at Coalberg is necessarily small, because the demand exceeds the supply, isn't that true?

A. That is true.

Mr. Minard: Is that always true?

Mr. Bain: Doesn't it depend somewhat on the rapidity of movement?

Mr. Chandless: Just a minute. I am doing the cross-examining.

Q. That condition only otherwise occurs in periods of very extreme cold weather, for a short time?

A. Or strikes or other interruptions in the mining of coal.

Q. Which ordinarily does not run for any four-year periods?

A. I hope not.

Mr. Chandless: That is all.

David D. Jamieson, called as a witness on behalf of the prosecutors, being duly sworn according to law by the Examiner, testified as follows:

Direct-examination.

By Mr. Minard:

Q. Mr. Jamieson, did I submit a series of interrogatories to you for preparation of information desired on this examination?

A. You did.

[fol. 210] Q. Did you supply the answers to those questions?

A. I did.

Q. Is the Erie Railroad Company a common carrier in Interstate commerce, subject to the Act to Regulate Commerce and the jurisdiction of the Interstate Commerce Commission?

A. Yes, it operates railroad lines in six States between New York and Chicago.

Q. What is your relation to the Erie Railroad Company?

A. I am Coal Freight Agent of the Erie Railroad Company, and am familiar with the tariffs, rules, regulations and other matters relating to the transportation of coal over the Erie lines.

Q. Are you familiar with the location and operation of the Coalberg Coal Storage plant?

A. Yes, and I have been familiar with it during the past twelve years.

Q. What has been the history of that plant since you have known it?

A. Prior to February 25, 1939 it was operated and used by various coal companies as private storage for their seasonal excess coal supply.

Effective February 25, 1939, the Trustees of the Erie made arrangements, afterwards incorporated in a written agreement dated July 10, 1939, to have the plant operated by the Pennsylvania Coal Company on behalf and at the expense of Erie, as a public service facility for the benefit of shippers of coal from the mines in Pennsylvania to the Port of New York area, for storage-in-transit under railroad tariffs.

Q. Do you know the reason why that was done?

A. It was done to provide storage-in-transit facilities for shippers over Erie and participating lines to avoid the diversion of coal shipments to competing railroad lines which provided such facilities to their shippers.

[fol. 211] Q. Is storage-in-transit an established transportation facility generally provided by coal-carrying railroads for the benefit of shippers?

A. Yes, storage-in-transit is a long established transportation facility, not only for coal, but also for many other commodities, within the definition of "Transportation" included in the Act to Regulate Commerce, and it

is covered by railroad tariffs on file with the Interstate Commerce Commission.

Q. Can you identify the tariffs applicable to storage-in-transit at Coalberg? I show you Exhibit P-12, with N. W. B. initials, introduced in evidence at the previous taking of this testimony, and ask you if the rules and regulations and conditions affecting this storage-in-transit at Coalberg are stated in that tariff?

A. They are.

Mr. Minard: I re-offer this Exhibit P-12 entitled, "Joint and Proportional Tariff, Anthracite Coal," issued in the name of Erie Railroad Company and the participating carriers stated therein, being I. C. C. Number D-1438.

(The paper referred to was received in evidence and marked Exhibit P-12.)

Q. Was that tariff filed with the Interstate Commerce Commission?

A. Yes, it was.

Q. Will you proceed and tell us about that tariff?

A. A tariff was issued January 24, 1939, effective February 25, 1939, by the Erie Railroad Company, in connection with four other railroads therein mentioned, covering interstate shipments of coal to Coalberg from stations in Pennsylvania, therein named, on the lines of the Erie Railroad Company, Lackawanna and Wyoming Valley Railroad, [fol. 212] New York, Ontario and Western Railroad and Wilkes-Barre and Eastern Railroad. That tariff was filed with the Interstate Commerce Commission as required by Federal Law, and carries the official designation of "I. C. C. No. D-1390."

That tariff remained in force until it was superseded by a joint and proportional tariff, known as I. C. C. No. D-1438, issued by the Erie on July 11, 1940, in connection with the same other railroad companies, and effective August 12, 1940, which tariff, with several supplements immaterial to the present question, except that supplement number 3 adds certain stations of origin in Pennsylvania on the Delaware & Hudson Railroad, is now in full force and effect.

Q. Can you describe briefly the tariff provisions in force since February 25, 1939, applicable to storage-in-transit at Coalberg?

A. The tariffs provide for the privilege of storage-in-transit in stock piles at Coalberg, for coal billed to the transit party for the stock pile by designation of the shipper. A charge of 14 cents per gross ton when the coal is unloaded and a like charge per gross ton when the coal is re-loaded is made to the shipper and paid by him to the railroad companies, which, together with the line-haul rate, includes the privileges of re-consignment, weighing and keeping of records of coal in and out of storage, inspection, reshipment, unloading, reloading, storage-in-transit and switching.

Q. Are the tariff provisions you have mentioned respecting the handling and storage of coal at Coalberg the same in all of the tariffs and supplements in effect since February 25, 1939?

A. Yes, with the exception that between March 18, 1942 [fol. 213] and May 15, 1943, the in-transit storage charge was 15 cents per ton in, and 15 cents per ton out of, storage.

Q. You have furnished the present tariff, that is, the tariff containing the present provisions?

A. Yes.

Q. During its operation as a public service facility, since February 25, 1939, has the Coalberg Storage plant been used for any purpose other than storage-in-transit for interstate shipments of coal under those tariffs?

A. No. It has been and is used exclusively for that purpose.

Q. Do you know whether storage-in-transit privileges are generally accorded under railroad tariffs for other commodities?

A. Yes, they are generally accorded to grain, ore, rubber, and many other commodities.

Q. Are these storage-in-transit privileges supplied as a result of traffic demands?

A. Yes.

(a) Coal is a commodity of seasonal consumption. Most of it is consumed in cold weather. If the mines could produce currently sufficient coal to meet cold weather requirements, the railroads would be swamped with coal traffic during the fall and winter months when other seasonal products are moving in large volume and weather conditions retard transportation operations. By spreading coal shipments for winter use over the months of most favor-

able operating conditions, a more uniform transportation revenue is assured.

(b) Coal dealers and consumers ship it more uniformly throughout the year by using storage-in-transit privileges under railroad tariffs, and use negotiable warehouse receipts to finance their purchases where necessary.

(c) The movement during warm weather of the bulk of the winter coal supply avoids car storage and releases [fol. 214] cars more rapidly than if they arrived frozen solid, as they often do in winter, where delayed by bad weather or had to wait unloading and use at the place of consumption.

(d) Experience has shown many instances, like those of recent occurrence, when a supply of stored coal close to the market areas has been necessary to prevent or relieve acute shortages of fuel in cases of labor, weather, or other interruptions in production or transportation.

(e) A uniform movement of coal during favorable operating conditions, avoids the congestion, delay and increased expense which otherwise attends rush and emergency transportation in winter weather.

(f) Such storage-in-transit facilitates a more uniform and steady employment, not only of the miners but also of railroad employees, as well as a more uniform and steady railroad revenue.

Q. Where does the coal mostly go when it leaves storage at Coalberg?

A. Mostly New York.

Q. Does the railroad company act entirely upon shipping instructions in connection with inbound and outbound handling and storage at Coalberg?

A. Yes. The railroad follows the billing or other instructions of the shipper or consignee.

Q. Who collects the charges for this storage-in-transit service?

A. The railroad companies collect all of the tariff charges and defray the expenses of the service.

Q. Is there any other coal storage plant on Erie lines available to shippers for storage-in-transit?

A. No. Coalberg is the only such facility on Erie lines.

[fol 215] Q. Do other competing carriers of anthracite coal provide storage-in-transit from Pennsylvania mines?

A. Yes. The New York, Ontario & Western at Middletown and Cadosia, New York; the Delaware & Hudson at Carbondale, Pennsylvania; the Lehigh Valley at Ransom and Hudsondale, Pennsylvania; the Reading at Abrams, and the Delaware, Lackawanna & Western at Wyoming, Pennsylvania.

Q. What about the Pennsylvania Railroad? You mentioned the Lehigh Valley and then you went to the Reading. What about the Pennsylvania Railroad?

A. I don't know where the Pennsylvania Railroad has their storage plant.

Q. Do they have a storage plant?

A. I believe they do.

Q. Is it a necessary element of competition for Erie to do so, this storage-in-transit?

A. Yes.

Q. Is the Coalberg transit storage plant one of the transportation facilities of the Erie that was taken over by the Federal Government under control by the President's executive order of December 27, 1943?

A. Yes, and it has since that date continued in operation under the former agreements.

Q. Does the Solid Fuels Administration have jurisdiction of this Coalberg operation?

A. No.

Q. Does the Erie maintain an agent at Coalberg?

A. Yes.

Q. That is, a freight agent?

A. Yes.

Q. Does the coal stored at Coalberg move on through billing and through joint rates from point of origin to final destination, with the privilege of stopover at Coalberg for storage-in-transit?

A. Cars are billed from mines to Coalberg for storage; charges are paid at Coalberg. When coal is re-shipped new [fol. 216] billing is issued to ultimate destination, and if any balance is due, such balance is paid by shipper at Coalberg.

Q. At the beginning of the shipment it is carried on instructions from the shipper for storage-in-transit?

A. That is right.

Q. When it moves out does it move out at the same through rate that it started with; in other words, the rate out is computed on the through rate, isn't it?

A. It is billed at total rate to the storage plant, and if it is lifted at the plant, after it has been in storage, it is reloaded and re-shipped.

Q. That is the through rate that governs the movement to ultimate destination?

A. Yes.

Q. When the coal is ordered out of storage does it move to ultimate destination as a continuance of the original interstate movement and under the original shipping contract, and the original through rates?

A. Yes. The published through rates from the mines to ultimate destination are protected.

Q. Are the tariff rates on the transportation of anthracite coal from the Pennsylvania mines to New York tidewater the same on all competing railroads?

A. Yes, except to the lower tidewater piers the rates from the mines are five cents per ton lower than to the upper piers. This five-cent differential is equalized by a higher towing charge from the lower piers.

Q. Are the tariff transit rates on coal storage the same on all those competing anthracite carrying roads?

A. Yes, they are the same as charged by the New York, Ontario & Western at Middletown and Cadosia, New York.

Q. Are the coal rates on all competing roads fixed by Interstate Commerce Commission orders?

[Vol. 217] Mr. Chandless: I object to that. I don't think the witness is competent to testify to that. That is a matter of law.

A. There have been a great many coal rate cases, where the majority of rates on anthracite have been fixed by orders from the Commission.

Q. Are the rates on the Erie included in those orders?

A. Not only on the Erie, but all railroads.

Q. Covering anthracite, and the instructions and orders cover the entire transportation of coal?

A. Yes, sir.

Mr. Minard: Cross examine.

Cross-examination.

By Mr. Chandless:

Q. You gave your opinion about the law, is that correct?

A. About the what?

Q. About the law in respect to shipments of coal, and so on?

A. The law?

Q. Yes; the I. C. C. regulation. That is a matter of law, isn't it?

Mr. Minard: The tariff.

A. The tariff? I can only testify to the tariff regulations.

Q. Was that something that you had written on the paper, that you just read from? Is that written on the paper? Your answers to the questions in this matter, you read from a paper, is that right?

A. That is right, excepting next to the last question and the answer.

Q. That is the only question that is not on the paper?

A. That is right.

Q. In other words, these questions and answers had all been prepared for you today, and you read them?

A. No.

[fol. 218] Q. Then what is the situation? Did you prepare these question-?

A. The questions were submitted to me for answers.

Q. In other words, you and Mr. Minard went over this matter, and he gave you this paper, and you are now testifying from it, is that corerct?

Mr. Bain: The witness answered the question before.

Mr. Chandless: He can tell us. He knows.

Mr. Bain: You are simply repeating the same question with the hope that you would get a different answer.

Mr. Chandless: It is a little bit too much, to say the least. Here is a man who is coal agent of a great railroad like the Erie, and he comes in and testifies from a piece of paper. None of my witnesses testified from a piece of paper.

Mr. Bain: He didn't testify from a piece of paper at all. He simply had his answers written out to a number of questions that he was going to be asked.

Q. Where did you get the paper from?

Mr. Bain: Where did he get the questions from, not the paper.

Q. The paper that you have in your hand?

A. From this office, I would say.

Q. You read your answers into the record, is that right?
A. Right.

Mr. Chandless: I move that they be stricken out as not properly taken.

Mr. Minard: You prepared the answers to the interrogatories submitted by me?

The Witness: I did.

[fol. 219] Mr. Minard: You are testifying according to the answers that you prepared?

The Witness: I am.

Q. You know, in your position as Coal Agent of the Erie Railroad, that rebates are illegal, don't you?
A. I don't know anything about rebates.
Q. You know that you cannot give one shipper a preference over another shipper? Can you?

Mr. Bain: Are you asking him for an answer of law? You objected to that a few minutes ago. Now you are asking him to testify as a legal expert.

Mr. Minard: Let me call your attention to the fact that the law does not forbid preference or rebates. It only forbids unlawful application.

Q. Will you answer the question, please? Is that your answer? Is Mr. Minard's answer your answer?
A. You are asking me a question that I have not testified to, aren't you?

Mr. Chandless: Would you read the question?

Q. (The last question was read by the reporter.)
A. I didn't testify to any preference or rebate. You are questioning me on preference and rebates.
Q. You testified that there was an agreement whereby the Erie Railroad would pay the bills for this storage plant, didn't you?

Mr. Minard: He didn't testify to that.

[fol. 220] Q. Didn't you testify about an agreement being made by the Trustees of the Erie Railroad, in your testimony, whereby this plant was to be operated for storage-in-transit, I think you called it? Didn't you give us it, that agreement, in your testimony?
A. Yes, I answered that.

Q. Doesn't that agreement provide that the Erie Railroad would pay whatever losses were sustained at Coalberg?

Mr. Bain: The agreement speaks for itself.

Mr. Minard: Do you want him to read the agreement and answer your question?

Mr. Chandless: I want to find out about how much he knows of what is going on. Here is a witness who is the Coal Agent of the Erie Railroad. He tells us about an agreement between the Erie Railroad and the Pennsylvania Coal Company.

Mr. Minard: Wouldn't you rather tell the Court that instead of to us? We know all about it.

Mr. Chandless: I want to find out. Why don't you ask the questions, then? He said he never heard of such an agreement.

Q. Do you recall the agreement that you testified about?

A. I testified to the agreement between the Erie Railroad and the Pennsylvania Coal Company to operate this plant.

Q. Doesn't that agreement provide that whatever losses are sustained there shall be paid by the Erie Railroad?

Mr. Bain: I object to that on the ground that the agreement speaks for itself. This witness could not change it in any way by anything he said.

[fol. 221] A. The agreement speaks for itself.

Q. Do you know what the loss was last year at that plant?

A. I do not.

Q. About $30,000, wasn't it, that the Erie Railroad paid?

A. I wouldn't know.

Q. You would not know?

A. No.

Q. I think you said that you were the Coal Agent there for some twelve years, is that right?

A. I was familiar with that plant, with the work of the plant, for twelve years.

Q. And during that entire twelve years, aside from the change in the billing of the coal, there was no change in the method of operation, was there?

A. I would not be familiar with the operation of the plant, that is, any changes that might have been made.

Q. What was the system used before 1939?

Mr. Minard: Doing what? Hoisting of the coal out of the cars or something?

Mr. Chandless: Yes. Let us start that way.

Q. Did they hoist it out of the cars the same way as they did before?

A. We never did hoist the coal out of the cars.

Q. How is it done now?

A. We open the hoppers and it drops into a pit, conveyed to belt conveyors and into the trimmers.

Q. That is the same today as it was?

A. To my recollection it is.

Q. Do you know of any other change since 1939 over the method used before 1939?

Mr. Bain: Do you mean as to the physical handling of the coal?

Mr. Chandless: I mean in any respect.

Mr. Bain: You are including the method of storage and all the rest of it?

[fol. 222] Q. Do you know of any change?

A. I am only a railroad man. I don't operate the plant. I am not there every day.

Q. You read a long dissertation on how the plant operated.

A. No, I didn't.

Q. Do you know what you actually read from the paper?

A. Certainly.

Q. Didn't you tell us that the bill of lading came through, and so on? You told us all about that.

A. The bill of lading is not mentioned once in this testimony.

Mr. Minard: They are not shipped on bills of lading at all. Coal is not shipped on bills of lading.

Q. Tell us how the coal comes from the mine to Saddle River Township.

A. It is billed by the shipper on waybills and shipped to the name of the consignee.

Q. What destination?

A. Rochelle Park, Coalberg, New Jersey, for storage; billed at the regular tariff rates from the mine to the storage plant.

Q. How was it billed before 1939?

A. The same way.

Q. How long did it used to remain at Saddle River Township before it was taken out?

Mr. Bain: Are you speaking of prior to 1939, when the plant was leased to Pattison and Bowns?

Mr. Chandless: Yes.

A. I wouldn't know.

Q. How long does it remain there now?

A. The tariff has a two-year limit.

Q. In other words, it comes in and it is held there awaiting orders from the consignee as to what is to happen to [fol. 223] it, is that right?

A. That is right.

Q. And it may remain there for a period of two years?

A. That is right.

Q. Then it may be re-shipped at the old rate, is that right?

A. No. After the two years cease it is re-shipped at a new rate.

Q. At any time up to two years it may be re-shipped at the old rate?

A. At the through rate from the mine at the time of the original shipment.

Q. At the time of the original shipment no one knows the final destination of that coal? It is merely delivered to Saddle River Township as a destination, is that right?

A. Well, that depends, speaking of the present time.

Q. In other words, ten carloads of coal leave the mine and go to Saddle River Township. They are put in big heaps. Come and get it. No one knows where that coal is finally going to end up, do they?

A. Today they do.

Q. Do you mean because of the scarcity of coal, and the fact that it does not remain there long at the present moment?

A. That is right.

Q. But in normal times, that coal would come in in the seasons when the demand is less than the supply, and lay there until the buyer calls for it, is that right?

A. Yes.

Q. It is built up in the late spring when the demand falls off?

A. Yes.

Q. There isn't so much demand then?

A. Yes, that is right.

Q. During the summer months it falls off?

A. Yes.

Q. I think you spoke of shipping during that time due to the fact that it does not freeze, and that is a good shipping time, the late spring and the summer?

A. Right, for storage.

[fol. 224] Q. Then it comes in and lays there until an order is sent through by the consignee as to what is to happen to the coal, is that right? Is that the normal, usual arrangement?

A. Yes.

Q. While it is there the coal is washed, is that right?

A. No.

Q. You don't know, or would you say it is not washed?

A. It is not washed while it is there.

Q. It is just put in the piles and then taken out of the piles again when the order comes through?

A. That is right.

Q. I think you said that was for the purpose of keeping the stock on hand to meet the demands of the customers, the consignees?

A. I didn't so testify.

Q. What is the reason for that storage? Why is it stored there? Why do they store it there?

A. Well, you answered it when you put the question yourself; because of the seasonal conditions the supply exceeds the demand, and, therefore, the operators bill it to storage, to store it at an advantageous point for reshipment. It also relieves the car situation. It also helps the operator to continue operating.

Q. In what way?

A. If they have too much coal in cars on tracks at the mines they cannot get any other cars to fill. They cannot get their empties. They have no place to put them.

Q. The reason for that is because the shipper at that time is not able to determine the final destination of the coal?

A. I wouldn't put it just that way. I would say that the shipper hasn't enough orders to ship it out direct to destination.

Q. The orders have not come through yet?

A. No.

Q. This 14 cents charge has no relationship to the period [fol. 225] of time that the coal may remain there? It is still a 14 cent charge whether it stays there a month or whether it stays there two years, is that right?

A. That is right.

Q. And that is the cost of unloading the coal, isn't it?

Mr. Minard: I object to that question. He testified differently.

A. No.

Q. Have you any figures which would demonstrate that it pays the storage?

A. No, I haven't.

Q. You would not say the figures indicate it does not pay for the storage?

A. The tariff tells you just what it pays for.

Mr. Minard: Just exactly what it pays for.

The Witness: I testified to that.

Q. Don't you know that the figures put in evidence by your company, the Erie Railroad Company, show that this 14 cent charge only pays for unloading?

Mr. Minard: The Erie has not put any figures in. How can he answer that question?

Mr. Bain: There are no figures that show any such thing put in here.

A. I haven't seen them.

Q. After 14 cents a ton was charged, wasn't there a loss last year of about $30,000?

A. I don't know.

Q. So you don't know whether it pays for storage?

A. I haven't seen a statement of the figures.

Mr. Minard: Read Rule 3 to him, and then he will know. [fol. 226] Do you want him to read it or don't you? That tells you exactly what the 14 cents is.

Q. Who prepared that tariff?

A. Our Tariff Bureau.

Q. In other words, that is a statement prepared by the Erie Railroad?

Mr. Minard: And filed with the Interstate Commerce Commission, according to law. Rule 3 tells you what it pays for. If you want to know he will tell you.

Mr. Chandless: We won't argue about what that is.

Mr. Minard: It is in evidence.

Mr. Bain: Don't argue with the witness.

Mr. Chandless: I am asking him what he knows about the coal business. He is the Coal Agent.

By Mr. Chandless:

Q. You are the Coal Agent of the Erie Railroad?

A. Yes.

Q. Are you head of the department?

A. I am head of the department in New York.

Q. And this yard comes under your supervision?

A. Yes.

Q. No coal goes into this yard unless you say it goes in there?

A. Yes, that is right.

Q. They have to have your approval?

A. Yes.

Q. Was this tariff prepared after consultation with you?

A. Well, yes, I was in the discussion when the tariff was being filed.

Q. Yet you prepared and filed a tariff with the Interstate Commerce Commission, and you don't know the price therein shown paid for the storage or not?

[fol. 227] Mr. Minard: Read Rule 3 and you will have it all.

Q. You don't know whether that 14 cents pays the cost of operating that storage yard or not, do you?

A. I don't know.

Q. Isn't that within the province of your duties, to determine whether or not this plan which you recommend is financially workable?

A. These charges were figured out long before I was in existence, I imagine.

Q. This is the same charge that existed there way back before you were in existence, which was twelve years ago?

Mr. Minard: Wait a minute. There was no coal tariff on Coalbeing then. It might have applied to someone else.

Q. In other words, this 14 cents a ton charge is something that was figured out long before your time?

A. Well, I just made that crack. I didn't figure out this charge by any means.

Q. That is something that came to you, before your day, is that right?

A. Yes.

Q. And it existed back—you were in charge of this matter since 1932? Right?

A. Yes, around there.

Q. That was a charge which was in existence in 1932?

A. That is right.

Mr. Minard: You testified that it has been changed in the meantime?

The Witness: Yes, that has been changed.

Q. The change that your attention has been called to by your able counsel, that is the result of this new method?

A. No. It was a general increase in rates.

[fol. 228] Q. A general increase in rates?

A. Yes.

Q. It had no bearing and nothing to do with the operation of this storage plant?

A. No; a general increase in rates.

Q. In other words, it was not intended to reflect any cost of operation of storage? It was an increase in rates that was general all along the line?

A. That is right.

Mr. Minard: Ordered by whom?

The Witness: Well, it was the Commission.

Q. It was asked for by the Erie Railroad?

A. No, it wasn't asked for by the Erie Railroad.

Mr. Minard: The I. C. C. issued the order covering that increase and they later issued another order cancelling the increase?

The Witness: That is right.

Q. By a general increase, you mean an increase on——

A. Rates and accessorial charges.

Q. There was nothing special so far as Coalberg went?

A. No. They came into the category of accessorial charges.

Q. You, of course, never prepared any figures as to the cost of warehousing?

A. No.

Q. What is the charge for unloading at other points?

A. Do you mean at other storage unloading points?
Q. Yes.

Mr. Minard: Do you mean the cost of unloading alone?
Mr. Bain: Do you mean the tariff charge similar to this one?

Q. You told us that there was an accessorial charge approved by the Interstate Commerce Commission. Is that [fol. 229] a general charge for unloading coal?
A. Our charge is the same as the charge covered in the New York, Ontario & Western tariff, applying at Middletown and Cadosia, 14 cents in and 14 cents out, including the rules and regulations published in our tariff. In fact, they are word for word.
Q. And those are the only places where coal is unloaded in this kind of business, that you know of?

Mr. Minard: He testified to other places on other railroads.

Q. Are you familiar with the rates at other places?
A. No, I am not.
Q. The only one that you know is the Ontario & Western charge?
A. That is right.
Q. Who owns that yard up there? The Ontario & Western?
A. To my knowledge it is the New York, Ontario & Western Railroad.
Q. They own it themselves?
A. Yes.

Mr. Minard: You don't know whether they own it or whether a subsidiary owns it?
The Witness: I don't know whether there is any subsidiary connection there at all. I was always under the impression it was owned by the New York, Ontario & Western Railroad.

Q. You don't know of the so-called warehousing arrangement up there?
A. No, I don't.

Mr. Minard: What do you mean, "so-called warehousing"? The rates?

Mr. Chandless: Where you rent to some warehouse company for a dollar a year.

Mr. Bain: You mean some warehouse company that might issue negotiable receipts.

Q. So far as you know the yard that you have just mentioned is owned by the Ontario & Western, and there is no dollar a year lease to any concern for the purpose of making a warehouse?

A. I don't know that.

Mr. Chandless: That is all.

THOMAS J. SNYDER, produced as a witness on behalf of the prosecutors, being duly sworn according to law by the examiner, testified as follows:

Direct-examination.

By Mr. Minard:

Q. Are you employed at the Coalberg plant?

A. Yes, sir.

Q. You act as Erie Agent up there?

A. Yes, sir.

Q. And before your time your father was the Erie Freight Agent at Coalberg?

A. Yes, sir.

Q. For how long?

A. Well, the Erie never had a Freight Agent there before this tariff went into effect.

Q. But since the tariff went into effect, in 1939, your father was the Erie Freight Agent there, and you have succeeded him?

A. That is right.

Q. Is the Coalberg plant the only plant or only yard in Saddle River Township subject to this ordinance?

A. Yes, sir.

Q. Are the tracks at the Coalberg plant used by the N. Y. S. & W. for assembly and classification of war materials, tank cars, and so forth, for switching to the water [fol. 231] front for overseas shipments?

A. That is right.

Q. How long have they been using that for a classification yard, for switching to waterfront terminals by their own freight?

A. The Susquehanna has always been receiving their cars from the Erie, and they assemble them and take them to Edgewater.

Q. That is part of the through movement?

A. That is right.

Q. They connect at Passaic Junction with the Erie-Bergen County?

A. That is right.

Q. And carry the freight on?

A. That is right.

Q. They use this as their classification yard for that purpose?

A. That is right.

Q. To what extent do they use those tracks at different times?

A. Well, sometimes we don't have any cars on them and they have them loaded with cars.

Q. All that track area?

A. That is right.

Q. They have that privilege under that agreement, Exhibit P-9?

A. That is right.

Q. So that their use covers, from time to time, all of the tracks in that property?

A. Absolutely.

Q. And that includes all of the tracks available for reaching your coal piles?

A. That is right.

Q. When cars arrive—we will say they arrive over the Bergen County at Passaic Junction—does the N. Y. S. & W. switch engine pick them up and move them into the classification yard and also to your conveyors?

A. Yes.

Q. So the N. Y. S. & W. performs all the switching service in that plant?

A. Yes.

Q. That coal, then, when it reaches Passaic Junction, is in the custody of the N. Y. S. & W.?

A. That is right.

Q. From there on until they deliver to us it is in the custody of the N. Y. S. & W.?

A. Yes.

[fol. 232] Q. When the coal goes out it goes out by N. Y. S. & W., at least, for switching purposes?

A. That is right.

Q. They deliver to whatever the delivering carrier may be, if they are not delivering, is that right?

A. That is right.

Mr. Minard: Cross examine.

Cross-examination.

By Mr. Chandless:

Q. Mr. Snyder, how long have you been up at Coalberg?

A. Nineteen years.

Q. Who did you work for during that period of time?

A. I worked for Pattison & Bowns up until the end of February, 1939, and since then I have been employed by the Pennsylvania Coal Company.

Q. And you have testified that you are the Freight Agent for the Erie?

A. That is one of the jobs, collecting freight charges for the unloading and re-loading fees provided by the tariffs.

Mr. Minard: Do you collect all the storage fees?

The Witness: Yes.

Mr. Minard: As the cars come in?

The Witness: As the coal is unloaded.

Q. You bill them? They don't come in and pay cash?

A. We bill them.

Q. Does the money come to you?

A. It comes to the Erie Railroad. We remit to the Erie Railroad. We remit to the treasurer of the Erie Railroad.

Q. You say that the money comes to the Erie?

A. That is right. As agent, the money comes to Coalberg.

[fol. 233] Mr. Minard: At your office?

The Witness: At my office, and we make remittances to the treasurer of the Erie Railroad.

Q. Sent directly through to the Erie?

A. Yes.

Q. What is the method used in so far as the loading and unloading charge prior to 1939? How was that paid?

A. There was no charge in effect, so, naturally, there was no unloading charge. It was a privately operated plant.

Q. In other words, during part of that time the yard was operated by one concern and then by another concern? How did they operate that?

A. From 1925 to the end of February, 1939, that plant was operated by Pattison & Bowns, and we were on their payroll and they paid all their expenses for us.

Q. Wasn't The Pittston Coal Company in there for awhile?

A. They might have owned Pattison & Bowns, but they didn't have anything to do with us. We were employed by Pattison & Bowns and they were our bosses.

Q. They paid the taxes there for a number of years?

A. I don't know what they paid in taxes.

Q. Now, as a matter of fact, Mr. Snyder, the area that is necessary for the storage of coal consists of the ten circles appearing on the floor plan lettered "Floor A, B, C, D, E," and also the two dotted circles which appear just above "Floor B and C" on Exhibit P-1? Is that correct?

A. The circles that you just mentioned are the areas upon which coal may be stored.

Q. Have you ever stored coal anywheres else?

A. No, but we have other facilities there outside of those areas that we have to have in order to operate.

[fol. 234] Q. What are they?

A. We have engine houses.

Q. The engine houses that you refer to are these little squares which appear just below the floor plan, and between the floor plan and the tracks, isn't that correct?

A. That is right. We have power lines running on coal company property.

Q. How many power lines have you got?

A. Well, in the way of feet there would probably be——

Q. How many lines? More than one line run-ing in there?

A. In a layout like that you couldn't serve that plant with just one straight line.

Q. One line running into the yard?

A. Yes.

Q. And it is then distributed between the various engine——

Mr. Bain: Feeder lines and transverse lines scattered all over the lot, isn't that right?

The Witness: That is right.

Q. How many sets of poles have you got, roughly, at the plant? You know what I mean.

A. There is forty-two poles of our own, not counting Public Service feeders.

Q. They are all in one stretch, aren't they?

A. No. Wherever there is any machinery there has to be an electric line going through.

Q. Where does the power come from?

A. Public Service.

Q. How does it come into the property; from what direction?

A. It comes in through Garden Street.

Q. They have one line running down Garden Street?

A. Yes.

[fol. 235] Q. It runs into that yard, that one line?

A. Yes.

Q. And from there it is split or divided up between the various machineries, is that right?

A. That is right.

Q. What else have you got up there?

A. We have equipment for pulling the cars, moving the cars to spot them under the loading chutes; take empties away and bring loads down.

Q. What kind of equipment is that?

A. They are long cables, endless cables.

Q. That is the same kind of cables used at all sidings, is that right?

A. No. I think it is the only one in New Jersey.

Q. Is that so?

A. Yes.

Q. Even on these tracks which you say the N. Y. S. & W. use?

A. The cables run between the tracks.

Q. You testified previously in these proceedings, didn't you?

A. What do you mean, "in these proceedings"?

Q. You testified before Mr. Bindseil, didn't you?

A. Oh, yes.

Q. Do you recall your testimony at that time?

A. I don't recall everything I said, no, sir.

Q. You told us that there were fourteen piles in this yard, at capacity, is that right?

A. I said there were fourteen. I probably said there were fourteen areas upon which coal could be stored.

Q. It had that capacity, fourteen areas?

A. Yes.

Mr. Minard: He didn't say anything about capacity.

Mr. Chandless: I used the word "capacity" when I talked of piles.

[fol. 236] Q. If this yard was loaded to capacity there would be fourteen piles? Right?

A. Yes, if it were loaded to capacity.

Q. Ten in the round circles and four on the dotted circles?

Mr. Minard: Two on the dotted circles.

Mr. Chandless: He previously testified that there were four in those dotted circles, and I think there are. There is one on each side of the track, on each dotted circle.

Mr. Bain: Four half circles.

Mr. Minard: The track is on an elevation above this whole area?

The Witness: No, sir.

Mr. Minard: That is not on an elevation?

The Witness: No. The track runs between.

Mr. Minard: It cuts the circles in two?

The Witness: Yes.

Q. You have testified that the total capacity to which all these piles were put is 25,000 tons?

A. That is right.

Q. You also testified that when the coal came in it was washed?

A. No, sir.

Q. Did you testify about water being used there to wash this coal?

A. Not when it came in.

Q. When is it washed?

A. A great proportion of it is never washed.

Q. There is a process of washing it when it goes out?

A. It is a freshening process. They use water to freshen the coal.

Q. You were kind of quibbling with me in the use of the words "in" and "out."

A. When? Just now?

Q. In other words, there is a washing process?

A. You said it was washed when it came in, and I didn't agree with you.

[fol. 237] Q. I was wrong. It is before it goes out. When the coal is ready to go it is freshened up?

A. Not all the coal.

Q. Why do you wash some and not others?

A. Some sizes need to be washed to be saleable on the market.

Q. What sizes are they?

A. From buckwheat and larger they have to be washed.

Q. Buckwheat; that is one of the smaller?

A. No; rice and barley don't have to be washed. That is smaller than buckwheat.

Q. From buckwheat up it has to be washed?

A. Yes.

Q. You also testified that 1941, 1942 and 1943 were not normal years, didn't you?

A. I don't recall.

Q. They were not normal years, were they?

A. Normal in comparison to what?

Q. Normal to previous years so far as demand equalling supply?

Mr. Bain: At the storage plant, you mean?

A. I have nothing to do with the demand equaling the supply. All I have to do is handle the coal when it comes in, loading it again when it goes out.

Q. You know that there is a big shortage of coal at the present time, don't you?

A. I read about it in the papers.

Q. You know that during those three years the amount of coal in there was entirely different than what it was in former years, don't you?

A. We have had less coal in storage the last three years than we have had in previous years, yes.

[fol. 238] Q. Don't you know that the coal dealers could do a whole lot more business if you could get the coal?

A. Are you asking me to guess?

Q. No, of your own knowledge of the business.

A. My knowledge of the business is what I read in the papers, just like the average John Doe.

Q. You don't know that there is any coal shortage?

A. Yes. I read it in the papers that there is a coal shortage.

Q. You don't know anything about that up at Coalberg?

A. About the coal shortage?

Q. Yes.

A. There is a shortage of coal at Coalberg. We don't have the piles we used to have.

Q. You don't know why that is?

A. No, sir.

Q. It may or may not be on account of the war?

A. I wouldn't know.

Mr. Chandless: That is all.

Redirect-examination.

By Mr. Minard:

Q. Mr. Snyder, is any part of the machinery or water tank or pump house, and so on, that is used at the Coalberg plant in connection with the storage business, used also by the N. Y. S. & W.?

A. That is right.

Q. Do you water their engines there?

A. We supply the water for their locomotives.

Q. Do you render any other service to the New York, Susquehanna & Western for their equipment?

A. Not as far as their equipment goes.

Q. Who handles the switches around the plant?

A. With respect to what?

Q. Well, the switching inside the plant.

A. There are no switches to be thrown inside. They are all practically straight tracks.

Q. And the same facilities that you use in the storage business, or a part of them, are also used for New York, [fol. 239] Susquehanna & Western regular railroad operations?

A. That is right.

Mr. Minard: That is all.

I want to re-offer Exhibit P-13, so marked by Mr. Bindseil, Township ordinance, with a mark on it indicating it

was introduced on March 9, 1934 and passed March 23, 1934. It is marked Exhibit P-13, and I re-offer that exhibit.

I also re-offer Exhibit P-14, so marked by Mr. Bindseil. It has a date, appearing that it was introduced on December 13, 1940 and passed on December 27, 1940.

(The papers referred to were received in evidence and marked Exhibits P-13 and P-14, respectively.)

Mr. Minard: Also, I re-introduce Exhibit P-16, so marked by Mr. Bindseil, which is a statement signed by the Pennsylvania Coal Company and Independent Warehouses, Inc., by Collins & Corbin, attorneys, and dated January 23, 1943.

Mr. Bain: That is the objection, the objections to the ordinance.

Mr. Chandless: These exhibits are all the same as they were before?

Mr. Bain: All the same, yes.

(The paper referred to was received in evidence and marked Exhibit P-16.)

[fol. 240] JOHN T. MCCORMACK, called as a witness on behalf of the prosecutors, being duly sworn according to law by the Examiner, testified as follows:

Mr. Minard: Mr. Chandless asked me if all the exhibits previously offered are now in. They are all in, except Exhibit P-15, which is withdrawn.

Direct-examination.

By Mr. Bain:

Q. Are you the president of the Independent Warehouses, Inc.?

A. Yes.

Q. One of the prosecutors in this case?

A. I am.

Q. How long have you been president of that company?

A. About two and a half years.

Q. And prior to that time were you one of its officers?

A. I was.

Q. What was your former position?

A. Vice-president.

Q. For how long a period of time have you been continously connected with that company?

A. About twenty-four years.

Q. Where was the Independent Warehouses, Inc. incorporated?

A. New York.

Q. What is its business?

A. Warehouse business, engaged in the business of storing merchandise for hire.

Q. In what States does the company operate?

A. Maine, Vermont, Massachusetts, Connecticut, New York, Pennsylvania, Virginia, North Carolina and Wisconsin.

Q. Is your company authorized to do business in New Jersey?

A. It is.

Q. And has it been for the last four or five years?

A. Yes, sir.

Q. Prior to that time had it been authorized to do business in this State?

A. Yes, sir.

[fol. 241] Q. For how long past was it authorized to do business in New Jersey?

A. At least twelve years.

Q. Does your company carry on the business of storing coal for hire at the coal storage plant of the Pennsylvania Coal Company in Saddle River Township, in this State?

A. Yes, sir.

Q. When did your company first begin to carry on that coal storage business at that place?

A. June 20, 1939.

Q. Did the Pennsylvania Coal Company lease the coal storage plant to your company?

A. Yes, sir.

Q. I show you a copy of a lease dated June 20, 1939, made by Pennsylvania Coal Company to Independent Warehouses, Inc., marked Exhibit P-5 in these cases, and ask you whether that is the lease under which your company operates the coal storage plant?

A. Yes, sir.

Q. Now, at the time that the lease was made, did your company enter into an agreement with the Pennsylvania Coal Company?

A. Yes, sir.

Q. I show you an agreement dated June 20, 1939, between the Pennsylvania Coal Company and Independent Warehouses, Inc., marked Exhibit P-6 in these cases, and ask you whether that is the agreement referred to?

A. Yes, sir.

Q. Was that agreement supplemented by another agreement dated May 24, 1940?

A. That is right.

Q. And I show you an agreement between the Pennsylvania Coal Company and the Independent Warehouses, Inc. dated May 24, 1940, and ask you whether that is the supplemental agreement?

A. Yes, sir.

Q. What services does the Independent Warehouses, Inc. render at the coal storage plant?

[fol. 242] A. The coal is billed to the shipper or owner for storage-in-transit at Coalberg, according to the designations of the shippers on the shipping orders at the time of the shipment from Pennsylvania. The coal is turned over to us by the railroad and we receipt for it and take it into our custody and control as public warehousemen, and hold it as such until it is ordered out by the owner.

Q. How is the Independent Warehouses, Inc. paid for its service as warehousemen?

A. Certain rates are prescribed and collected from the shippers by the railroad companies under their published and filed tariffs. Out of that we get paid for our warehouse services.

We collect and keep all fees received from the issuance of warehouse receipts, at the rate of two cents per ton, from June 20, 1939 until May 24, 1940, and thereafter at the rate of half a cent a ton. We were guaranteed a minimum revenue of $600 between those dates, and after May 24th $500.

Q. After May 24, 1940 you were guaranteed an annual return of $500 as a commercial warehouseman?

A. As a commercial warehouseman we were guaranteed an annual return of $500.

Q. Why was the guarantee limit reduced on May 24 1940?

A. Well, the competition and the ground storage business was such that we were in danger of losing the business at

Coalberg to a competitor, and we agreed to this reduction to meet that competition, to retain that ground railroad business.

Q. What are the competitive conditions involved in the business, that you have mentioned?

A. There were many public warehousemen engaged in this character of storage business, and they are all seeking it.

[fol. 243] Q. Who has the possession of the coal at the coal storage plant after it is placed in storage?

A. We have.

Q. Exclusive possession?

A. Exclusive possession, yes, sir.

Q. And also the custody and control of the coal while it is in storage?

A. Yes, sir.

Q. All as public warehousemen?

A. Yes, sir.

Q. You issue warehouse receipts for the coal, whenever they are requested?

A. That is right.

Q. During the operation of the coal storage plant by your company, has it handled any coal other than that transported by railroads in interstate commerce, from mines in Pennsylvania, under railroad tariff storage-in-transit privileges?

A. No, sir.

Q. Who owns the coal stored in the coal storage plant?

A. It is all owned by the various shippers indicated on the railroad bill of lading or the warehouse receipts.

Q. Has that been so ever since Independent Warehouses, Inc. began to operate the storage plant?

A. Yes, sir.

Q. You mean waybills, not bills of lading. The coal comes in on waybills?

A. Yes, waybills.

Q. Did the Pennsylvania Coal Company own that coal stored at the coal storage plant in Saddle River?

A. No, sir.

Q. Does it today own any coal stored there?

A. No, sir.

Q. How is the coal placed in storage? Does it come into the coal storage plant on railroad cars?

A. Yes, sir.

Q. Then is it unloaded from the cars to the storage pile?

A. Yes, sir.

Q. And kept in storage until it is ordered out?

A. Yes.

[fol. 244] Q. And who orders it out?

A. The owner.

Q. And when the coal is ordered out of storage, is it again placed in railroad cars?

A. It is re-loaded into railroad cars and continued on the railroad bill of lading.

Q. That is all done under the railroad tariff, isn't it?

A. Yes, sir.

Q. Is any of the coal delivered out of storage except by re-loading in railroad cars?

A. No, sir.

Q. And without being re-shipped or re-consigned by the railroad company on shippers' or owners' instructions?

A. No, sir.

Q. Who collects the storage charges from the shippers or owners of the coal?

A. The railroad collects all the railroad's charges; all we collect is the contract rate per ton on coal, for which we issue warehouse receipts.

Q. And they guarantee a minimum?

A. Yes.

Q. What was the amount of the gross income received by Independent Warehouses, Inc. for warehousemen's services at the Coalberg Storage plant in the last five years?

A. From June, 1939 until May, 1940, $937.27; from June, 1940 to May, 1941, $500; from June, 1941 to May, 1942, $500; from June, 1942 to May, 1943, $500; from June, 1943 to May, 1944, $500.

Q. So that, with the exception of the year from June, 1939 to May, 1940; your company received the minimum compensation to be paid under your agreement with the Pennsylvania Coal Company?

A. That is right.

Q. The ordinance of the Township of Saddle River involved in this case provides for an annual license fee to be computed on the basis or rate of three-quarters of a cent for each square foot of the total ground area of the place [fol. 245] and premises in the Township of Saddle River at which said business is conducted or carried on, that is, the

business of storing personal property in a warehouse engaged in the storing of goods for hire?

A. Yes

Q. Would it be possible for your company to carry on its business of storing coal in Saddle River Township and pay a license fee as required by that ordinance?

A. No, sir.

Q. Why not?

A. The fee is prohibitive.

Q. Mr. McCormack, your company did not apply for a license to do business, as required by the licensing ordinance of the Township of Saddle River, did they?

A. No, sir.

Q. And a summons was served upon your company for an alleged violation of that ordinance, is that correct?

A. Yes, sir.

Q. Returnable before the Recorder's Court of the Township of Saddle River?

A. Yes, sir.

Q. And the complaint for violation of the ordinance alleged that the Independent Warehouses, Inc. on April 12, 1943, between the hours of eight and ten o'clock a. m., at the Township of Saddle River, on assessment map shown as Block 106-D, commonly called Coalberg, conducted or carried on the business of the storage of personal property in a warehouse engaged in the storing for hire, without their having been granted, by the Township Committee of the Township of Saddle River, a license.

Now, assuming that the place or premises at which the business alleged in the complaint to have been conducted or carried on, consisted of Block 106-D on the assessment map of Saddle River Township, and that that block contained 2,730,296 square feet, and the license fee under the ordinance based on the number of square feet would [fol. 246] be $20,475, would it be possible for your company to pay any such license fee and carry on its business as a coal storage plant?

A. No, sir.

Q. Why?

A. The fee is prohibitive.

Q. Would it be possible for your company to continue to carry on its coal storage business at the plant and pay anything other than a nominal license fee?

A. No, sir.

Q. By nominal fee I mean not over $100 or $200?

A. That is right.

Q. Could the Independent Warehouses, Inc. earn a sufficient amount from the issuance of the negotiable warehouse receipts for coal stored at this coal storage plant, to enable it to pay a substantial license fee under that ordinance, and at the same time carry on the company's business?

A. No, sir.

Q. Would it be possible for your company to increase its earnings from its business at the coal storage plant so as to enable it to pay a license fee under that licensing ordinance, and at the same time carry on its business?

A. No, sir.

Q. If your company were compelled to pay a license fee as required by the license ordinance of Saddle River Township, would it be compelled to go out of business at the plant?

A. Up there, yes, sir.

Q. Could your company increase its storage charges at the coal storage plant without the permission of the OPA?

A. No, sir.

Q. By OPA I mean the Federal Office of Price Administration.

A. That is right. You have to get permission.

Q. And the OPA regulations apply to all your competitors in the storage business, do they not?

A. Yes, sir.

[fol. 247] Q. If you were compelled to pay this license fee and could not earn enough to pay it under the OPA regulated storage regulations, you would have to go out of business?

A. At that place, yes.

Q. Is there anything pertaining to the storage of coal at the coal storage plant in Saddle River Township that threatens to affect the health, welfare, or safety of the community?

A. Not a thing. The coal is not inflammable and it is not combustible as most other property, such as wooden dwelling houses. The coal storage plant presents no menace whatever. It is no different from the coal stored in a private dwelling, say, or in a coal yard. There are no fumes, odors, and it is not in a residential section.

Q. The business carried on by your company at the coal storage plant in Saddle River Township during the last three or four years shows that the company could not earn more than the minimum guaranteed under its agreement with the Pennsylvania Coal Company, isn't that so?

A. That is right.

Q. Did you testify before the Recorder on the hearing of the complaint against you for violation of the licensing ordinance of the Township?

A. Yes, sir.

Q. Did you at that time testify that the arrangement under which the Independent Warehouses, Inc. operates the storage plant in that Township is a device to avoid the payment of any taxes?

A. No, sir.

Q. You at that time and place testified that the land on which Independent Warehouses, Inc. operates at the storage plant has an area of sixty-seven and one-quarter acres?

A. No, sir.

[fol. 248] Q. Did you then testify that Independent Warehouses, Inc. stored any coal of the Pennsylvania Coal Company at the coal storage plant?

A. No, sir.

Mr. Bain: That is all.

Cross-examination.

By Mr. Chandless:

Q. I call your attention to Exhibit P-6, and ask you who is referred to as the customer in Exhibit P-6?

Mr. Bain: I object to the question on the ground that the agreement speaks for itself, and states who the customer is.

A. Pennsylvania Coal Company.

Q. You executed that agreement, didn't you?

A. I believe I did.

Q. And in that agreement you say on Page 5 of the typewritten copy of it, "It is understood that the delivery of coal in said warehouse and the transportation of coal from said warehouse shall be performed by the customer"? What does that sentence mean?

A. The Pennsylvania Coal Company would perform that or have it performed.

Q. It means that they would deliver the coal to you and take it away, is that right?

A. Yes, sir.

Q. That refers to all of the coal in that agreement, doesn't it?

A. That is right.

Q. And the coal is the coal of the Pennsylvania Coal Company, isn't it?

A. Well, no.

Mr. Bain: That does not prove that the coal is the coal of the Pennsylavnia Coal Company.

Mr. Minard: The customer is only the one that they make the contract with.

[fol. 249] Q. I want to know what you meant when you signed the agreement.

A. We naturally signed the agreement with the Pennsylvania Coal Company.

Q. You refer to them as your customer?

A. Yes.

Q. In there you say, "It is understood that the delivery of coal in said warehouse and the transportation of coal from said warehouse shall be performed by the customer."

Mr. Bain: I object, unless the witness's attention is particularly called to the agreement between the Pennsylvania Coal Company and the Trustees of the Erie Railroad. You have to read the two agreements together in order to ascertain what the word "customer" means.

You should direct the witness's attention to that fact.

A. It means that the Pennsylvania Coal Company would perform it or have it performed.

Q. It means that the Pennsylvania Coal Company are your customers and it was their coal?

A. Not necessarily.

Mr. Bain: The word "customer" is a mere designation giving a title to the Pennsylvania Coal Company for purposes of the agreement. The "customer" ordinarily means one who purchases something.

Q. I understand that the Pennsylvania Coal Company deliver their competitors coal.

Mr. Bain: Who is their competitor?

Q. Has the Pennsylvania Coal Company got any competitors?

A. I don't know. I assume they have.

[fol. 250] Q. Do I understand that this agreement that you executed with the Pennsylvania Coal Company provided that the Pennsylvania Coal Company was to deliver competitors' coal?

A. It could be possible.

Q. What do you understand that the agreement means in that respect?

A. We surely did not mean that the coal belonged to the Pennsylvania Coal Company; not necessarily.

Q. What does it mean?

A. Only that we entered into an agreement with the Pennsylvania Coal Company.

Q. What did you mean when you used the words in that agreement, "It is understood that delivery of coal to the said warehouse shall be performed by the customer"? Did you mean by that to deliver their competitors' coal?

A. They could have it performed regardless of whose coal it was.

Q. Would they deliver their competitors' coal to you?

A. Maybe. I wouldn't know.

Q. In short, all you have to do with your coal yard is to collect $500 a year, is that right?

A. To do what?

Q. All you have to do with your coal yard is to collect $500 a year, is that right?

A. And issue warehouse receipts.

Mr. Bain: I object to any further questioning along this line unless this provision of the agreement is called to the attention of the witness. I submit it is not fair to pick out certain portions of that agreement and direct the witness's attention to them, without calling his attention also to other portions of the agreement which are necessary for him to have in mind in order to answer your questions.

[fol. 251] Mr. Chandless: I will leave it to the Court as to whether or not it is proper cross-examination. Do you maintain that the questions that I am asking him are not proper cross-examination?

Mr. Bain: Absolutely I do.

Mr. Chandless: Do you mean that this witness must be protected to that extent?

Mr. Bain: I mean that this witness is entitled to read the whole agreement before he answers any of your questions, and if you do not give him the opportunity to read the whole agreement, he has a right to have his attention called to other portions of the agreement which it is necessary for him to have in mind in order to answer your questions. That is only common fairness.

Mr. Chandless: I am trying to find out what this agreement means.

Mr. Bain: Perhaps counsel is protecting the witness against unfair questions, and he can only do it by objecting.

By Mr. Chandless:

Q. As a matter of fact, all the expenses of the operation of this agreement were to be paid by the Pennsylvania Coal Company? Is that correct?

A. Yes, sir.

Q. So that, in short, when, as appears by Exhibit P-10, there was an operating deficit at Coalberg on December 31, 1943, of $30,735.59, for the year 1943, that operating deficit was paid by the Pennsylvania Coal Company under its agreement with you, isn't that correct?

A. I don't know.

Mr. Minard: They include his figures, but they include a lot of other figures.

The Witness: I wouldn't know that.

[fol. 252] Q. All of the operating expenses at Coalberg were, under your agreement, to be paid by the Pennsylvania Coal Company, isn't that right?

A. Yes, sir.

Q. So that you collect your $500 for the use of your name?

Mr. Bain: I object to any such imputation. That is not shown by the agreement.

A. And the issuance of warehouse receipts.

Q. As a matter of fact, under Paragraph 5 of Exhibit P-6 even your attorney's fees are paid by the Pennsylvania Coal Company, aren't they?

A. They are supposed to.

Q. That is no disgrace.

A. There were no attorney's fees on there. That is a form lease.

Q. The customer, Pennsylvania Coal Company, agreed to reimburse the warehouse company for any loss caused or expenses for damages paid or incurred by the warehouse company in connection with the warehouse operations on the demised premises, isn't that right?

Mr. Minard: Read the rest of it.

Mr. Chandless: You have a right to examine him.

Mr. Minard: Why don't you read the entire paragraph? Why don't you be honest about that?

Mr. Bain: You don't understand that it is not correct to call a witness's attention to part of a written document, for the purpose of getting an answer that you want, without calling his attention to the entire document or giving him the right to read it?

Mr. Chandless: He signed this agreement.

[fol. 253] Mr. Bain: He can't carry it all in his head.

Mr. Minard: Let him read the paragraph. Give the witness a chance.

Q. Were there any expenses of operation, of any kind or character, paid by Independent Warehouses, Inc. at Coalberg?

Mr. Minard: Objected to, because the agreement expressly says that there are exceptions.

Q. Were there any paid? Did you pay any expenses of operation at all up there at Coalberg?

A. Well, we had some expense in connection with the operation, if that is what you mean.

Q. Tell us what they were.

A. Auditors, say every two months; signs that we had made.

Mr. Minard: His salary.

A. (Continuing:) Part of the auditor's salary.

Q. Those are apportioned, aside from the signs, perhaps; they are apportioned between the various warehouse operations that your company has? Your salary certainly is not paid out of Coalberg out of the $500 that you get?

A. No, sir.

Q. And the auditing expenses that you might have are not paid out of Coalberg?

A. It is possible.

Q. In other words, you get $500 a year and you pay out of accumulated receipts of a similar nature, from other warehousing arrangements, your salary is paid and the auditing expenses are paid, is that correct?

A. That is right.

Q. You put up a sign in your place?

A. Yes.

[fol. 254] Q. Mr. Thompson and Mr. Snyder get paid by the Pennsylvania Coal Comapny?

A. Mr. Thompson gets paid by us.

Q. He gets paid by you?

A. Yes.

Q. Doesn't that agreement provide that he is to be paid, and then you charge it back to the Pennsylvania Coal Company?

A. To the Pennsylvania Coal Company, yes.

Q. Will you tell us what in this agreement would make you responsible for license fees?

A. We pay license fees in some cities.

Q. Where in this agreement—a license fee would be a loss to you and an expense?

A. Yes.

Mr. Bain: That is your construction.

Mr. Chandless: I am trying to find out.

Mr. Bain: Don't ask him to legally construe this contract, please.

Mr. Chandless: If anybody can, they are good.

Q. As a matter of fact, if this license fee is held legal you are just going to pass it right along to the Pennsylvania Coal Company, and they are going to pass it along again, isn't that true?

Mr. Bain: I object on the ground that it is entirely improper. He doesn't know.

A. I don't know. That will have to be worked out.

Q. Your company never applied for a permit for the area actually used for storage purposes?

A. No, sir.

Q. Do you know what the area actually used for storage purposes is?

A. No, sir.

Q. Calling your attention to Exhibit P-1, I ask you whether it is not correct that the area actually used for

storage purposes, if, as and when the yard is at capacity, is the area embraced in the ten circles appearing on "Floors [fol. 255] A, B, C, D and E," and also the area within the dotted circles, above the circles in the floor area?

A. That is correct.

Mr. Minard: Is the answer correct? What about the tracks and power house and all the other things that you use?

The Witness: That would take it all in, naturally.

Q. You don't store coal in power houses, do you?

Mr. Minard: He conducts a business there.

Mr. Bain: There is nothing in your ordinance as to a license fee being placed on that portion of the coal storage business.

Q. Do you store coal in the power house?

A. No.

Q. You never applied for a permit for the area embraced within the so-called floors where the coal was actually stored, did you?

A. No, sir.

Q. As a matter of fact, the area of the property actually used at Coalberg for the storage of coal is about 630,000 square feet, isn't that correct?

A. I don't know.

Mr. Minard: The ordinance says, "For conducting a business."

Q. It doesn't say that it is limited to coal floors? How big are the power houses, if we include those in that area?

Mr. Minard: How about the tracks?

Mr. Chandless: We would have a fine job making you take out a permit for tracks.

Mr. Minard: You have got a fine job making us take any permit out.

[fol. 256] Q. These tracks that Mr. Minard has referred to are the tracks where the N. Y. S. & W. make up their freight trains, isn't that correct?

A. Yes.

Mr. Bain: They are also used for the purpose of placing the coal for storage?

The Witness: Yes.

Q. They are the tracks that the New York, Susquehanna & Western Railroad use to make up their freight trains, and the tracks on which this coal comes in, aren't they?

A. That is right.

Q. You don't store coal in cars for any period longer than it is necessary to get it out of the cars and into the piles, isn't that true?

A. That is right.

Q. There are no OPA regulations on storage charges, except that all storage charges are frozen? That is what you mean?

A. That is what I mean.

Mr. Minard: Is that right, Mr. McCormack?

The Witness: Yes, I say it is right.

Mr. Minard: Well, have you read the regulations?

The Witness: No, I haven't, but——

Mr. Minard: Here (handing witness papers); just look at it.

Mr. Chandless: I object to this.

Mr. Minard: That is not what the regulations say.

Mr. Chandless: You produce, Mr. Minard, what is reputedly a competent witness. You vouch for him, and now you find that he does not give the answer that you like. Therefore, you try to put words in his mouth. He should know something about the warehouse business.

[fol. 257] Mr. Minard: Why shouldn't the regulations be the best evidence?

Mr. Chandless: Your associate asked him questions.

Mr. Minard: Being an associate I have a right to object.

Mr. Chandless: You should object at that time. Don't object when I cross-examine.

By Mr. Chandless:

Q. You spoke about general welfare, as far as a coal yard of this character goes. You have heard of coal fires, haven't you?

A. Yes, sir.

Mr. Bain: In mines, yes.

Q. You have heard of coal fires in a coal yard, too, haven't you?

A. No, I haven't. I don't recall that I ever heard of any.

Q. You don't recall Burns Brothers fire down along some yards they had in the East River, New York?

Mr. Bain: That was bituminous coal.

Mr. Minard: That was a pier that got on fire, not the coal.

Q. And the coal burned for days?

A. No, I don't recall that.

Q. You say that this coal could not burn?

A. It is not inflammable.

Q. By "inflammable" you mean what?

A. To ignite. The spark could not be created.

Q. You mean that the chances of spontaneous combustion are rather remote? Is that what you mean?

A. Yes.

Q. You would not say that the coal would not burn?

A. If you put it on fire, of course, it will burn, but [fol. 258] you don't hear of a coal yard burning. I don't recall the fire that you mentioned, Burns Brothers, and I know where Burns Brothers is.

Q. Your attorneys remember it.

A. How many years ago is that? You very seldom hear of it.

Q. Well,——

Mr. Chandless: You were talking about it being bituminous coal?

Mr. Bain: If that is the one I have in mind, it was. I don't know which one you have in mind.

Mr. Chandless: I had in mind the same one that Mr. Minard referred to, where Burns Brothers pier or piers in New York got on fire.

Mr. Minard: I was mentioning that that was a pier fire and not a coal fire. It was coal that ignited from the fire on the pier.

Q. How about the danger of theft? Do people come in to steal your coal?

A. It is possible.

Mr. Bain: They keep a watchman there, though.

The Witness: Especially in these days.

Q. It is usual?

A. It is possible.

Mr. Minard: The police of Saddle River Township never did anything about it, did they?

Q. You spoke about the area where this is located. Isn't it correct that in that block there is a new housing development?

A. Yes, but I wouldn't call it a residential section, that neighborhood. A few houses.

Q. How many?

A. A few

[fol. 259] Q. There is a new housing development within a block of it, isn't there?

A. Yes, there are some houses.

Q. Doesn't your own exhibit show houses?

A. Yes.

Q. That housing development does not appear on that exhibit, does it?

A. No.

Mr. Bain: How does he know if he has not looked at it?

The Witness: I didn't take notice.

Mr. Chandless: That is all.

Direct-examination.

By Mr. Minard:

Q. With regard to this word "customer," as far as you are concerned, in making that agreement, the Pennsylvania Coal Company was your customer on your books; wasn't it?

A. That is right.

Q. Is that what that word "customer" meant?

A. That is right.

Q. And the provision that they should put the coal in and take it out, did that mean anything more than you would have no responsibility for placing the cars in or taking them out?

Mr. Chandless: I object to it as leading.

A. That is right.

Mr. Chandless: He testified before he couldn't tell what it meant.

Q. The entire agreement, Exhibit P-6, the operating agreement, constitutes your agreement with the Pennsylvania Coal Company, doesn't it?

A. Yes.

Q. And not one line or one paragraph?

A. The entire thing.

[fol. 260] Mr. Minard: That is all.

Mr. Chandless: You also have P-5.

Mr. Bain: That is the supplemental agreement that changed the rate.

Mr. Chandless: P-7 changed the rate.

By Mr. Chandless:

Q. You have another one with the Pennsylvania Coal Company where they are referred to as "lessor"?

A. We have a lease and a supplemental agreement.

Q. Why was it necessary to have the second agreement? The Pennsylvania Coal Company is referred to in one as "lessor" and in the other one they are referred to as "customer."

A. That is a legal term. One is a lease and one is the agreement.

Q. You rented this from the Pennsylvania Coal Company. Why was it necessary for you to have this agreement with them as "customer"?

A. The agreement specifies it, and you had to specify some money in it. You had to agree to certain things.

Mr. Bain: The agreement speaks for itself.

Mr. Chandless: This is cross-examination.

Q. You get your money under your lease?

A. No.

Q. You get your money under your agreement with the customer, is that correct?

A. That is right.

Q. In other words, the Pennsylvania Coal Company in one instrument leases it to you for a dollar, and in the second instrument they pay you $500 for the use of your name?

[fol. 261] Mr. Bain: I object to that on the ground that it contains an imputation that is disproved by the exhibits in the case.

A. No.

Q. What is the second agreement, the so-called customer agreement?

A. It speaks for itself, as Mr. Bain said. It outlines certain things that had to be performed.

Mr. Chandless: That is all.

JAMES THOMPSON, called as a witness on behalf of the prosecutors, being duly sworn, according to law by the Examiner, testified as follows:

Direct-examination.

By Mr. Bain:

Q. Are you employed by Independent Warehouses, Inc., one of the prosecutors in this case?

A. I am.

Q. What is your position with that company?

A. I am called the manager of the yard, of the Coalberg Storage plant.

Q. By yard, you mean the coal storage plant in Saddle River Township?

A. That is right.

Q. You are manager of that plant for the Independent Warehouses, Inc.?

A. That is right.

Q. They pay your salary, don't they?

A. They do.

Q. What are your duties at the plant?

A. To keep the records of the coal for the different consignees and notify the Independent Warehouses, Inc., of the tonnage, and give them weekly reports of the coal in storage for each account; keep a record of the warehouse receipts issued and cancelled.

[fol. 262] Q. Who issues the warehouse receipts?

A. The New York office.

Q. They come through you?

A. Yes, they come through me.

Q. You advise the New York office when you issue warehouse receipts?

A. Yes.

Q. Upon receipt of the warehouse receipts you transfer them to the owners of the coal?

A. No. They give me a letter telling me they have to issue tonnage to different concerns.

Q. The business at the coal storage plant is conducted and carried on by the Independent Warehouses, Inc., as a public warehouse, is it not?

A. That is right.

Q. You don't carry it on yourself?

A. No, sir.

Q. You are merely an employee of the company that actually conducts and carries on the business?

A. That is right.

Q. You have no other interest in the business except to manage the plant for the Independent Warehouses, Inc.?

A. That is right.

Q. You were served with a summons for violation of this ordinance, returnable before William Scheele, the Recorder of the Township of Saddle River, were you not?

A. I was.

Q. The summons was issued on a complaint that you violated the licensing ordinance of the Township because you worked in, occupied or utilized the place or premises in which then and there was conducted or carried on the storage of personal property in a warehouse engaged in the business of storing of goods for hire, without there having been granted by the Township Committee of the Township of Saddle River a license?

A. Yes.

Q. You worked on the premises, did you not?

A. I did.

[fol. 263] Q. You did not occupy it, then?

A. No, sir. I just worked there.

Q. You did not utilize them?

A. No, sir.

Q. In fact, all that you did was to work for the company that did conduct or carry on the coal storage business at the coal storage plant?

A. Yes.

Q. And you occupied or utilized it for that purpose, is that correct?

A. That is right.

Q. Did you serve on the Township Committee of the Township, in behalf of the Pennsylvania Coal Company

and Independent Warehouses, Inc., objections to the passage of the ordinance, before the ordinance was passed?

A. I did. I served it on Joseph Gardner, the Township Clerk, January 25, 1943, I believe, at six-thirty P. M.

Q. The meeting at which the ordinance was passed was not held until some time subsequent to that date?

A. That is right.

Q. I show you a copy of those objections and ask you whether those are the objections filed by you?

A. That is right.

Mr. Bain: I desire to offer these objections in evidence. These objections have been heretofore offered and marked as Exhibit P-16.

(The paper referred to was received in evidence and marked Exhibit P-16.)

Mr. Bain: That is all.

Cross-examination.

By Mr. Chandless:

Q. You testified in the tax certiorari proceedings, didn't you?

A. I believe so.

Q. You have been employed by the Independent Warehouses, Inc. for a number of years, haven't you?

A. Yes, sir.

[fol. 264] Q. How many years was that?

A. Going on fifteen, that I have been at the plant.

Q. And during that period of time you were employed by the Independent Warehouses?

A. That is right.

Q. In the same capacity in which you are now employed?

A. Yes, sir.

Q. In other words, this is a clerical duty of issuing the warehouse receipts, is that right?

A. I don't issue them. I just keep a record of the receipts that are issued.

Mr. Minard: Are you talking about since it has been a storage warehouse or talking about when it was operated by Pattison & Bowns?

Mr. Chandless: I am talking about the witness's testimony; as he previously testified and as he has testified today.

Mr. Minard: Has he previously testified? There is his testimony of the previous time (indicating). You won't find a word in there about issuing warehouse receipts.

The Witness: I said I didn't issue them.

Mr. Minard: You mean that during Pattison & Bowns' time you didn't issue them?

The Witness: I didn't issue them. I took a record of the warehouse receipts that were issued.

Q. How did you do that? By telephone or mail?

A. No; by mail.

Q. That is the same system that is used today, is that right?

A. Practically.

Q. Now, your connection with the Independent Warehouses, Inc., with Coalberg, goes back for at least fifteen years, is that right?

A. Well, in the neighborhood of that.

[fol. 265] Q. And about these agreements back and forth between the Pennsylvania Coal Company and Independent Warehouses, Inc., you know nothing about them? They did not go through your hands at all?

A. No, I didn't know anything about them.

Q. The present method is the same as the old method, as far as your duties go?

A. Yes, in so far as my duties are concerned.

Q. You got your check, then, from the Independent Warehouses, Inc.?

A. Originally I didn't. I got it from Pattison & Bowns. I was later transferred to the Independent Warehouses payroll.

Q. Do you know anything about them being reimbursed by the Pennsylvania Coal Company?

Mr. Bain: You are speaking of what time? I want you to fix the period for the purposes of your last question.

A. I have heard it through the testimony.

Q. So far as you are concerned you are just going along on the same system used in the past fifteen years?

Mr. Bain: I object on the ground that the witness has testified on that. If you recollect, he said he issued warehouse receipts for Pattison & Bowns.

Mr. Chandless: I am examining the witness.

Mr. Bain: You can't ask him on cross examination a question which is directly contrary to an answer you got on a previous examination question.

Mr. Chandless: I am entirely satisfied with all his answers. Will you read the last question?

[fol. 266] Q. (The last question was read by the reporter.)

A. As to what? The way the records are kept?

Q. Yes.

A. Except the change when the Erie took over.

Q. When the Erie took over? When was that?

A. That was when the Pennsylvania Coal Company took over the operation for the Erie.

Q. That was about when?

Mr. Minard: The contract shows that.

Mr. Chandless: If he knows.

Q. Do you know?

A. No.

Q. Four or five years ago?

A. Yes.

Mr. Bain: 1939.

Q. Then, as I understand it, the warehouse receipts were always issued in New York by Independent Warehouses, is that correct? You telephoned or wrote in there?

A. They would get weekly reports as to the coal in storage.

Mr. Minard: When you say "always," do you mean since the Erie took over?

The Witness: No; previous to that.

Mr. Minard: You mean that the Independent did that spot storage in there for Pattison & Bowns?

The Witness: Yes.

Mr. Minard: At times?

The Witness: Yes.

Mr. Minard: Not all the coal was handled?

The Witness: No.

Mr. Minard: Only special lots?
The Witness: Yes.

Q. The Independent Warehouses, Inc. was in there and you were working for them?
A. I was on their payroll.

[fol. 267] Mr. Minard: Prior to February, 1939?
Mr. Chandless: For fifteen years he was on their payroll.
The Witness: I was originally on Pattison & Bowns payroll and then I was transferred to Independent.

Q. When did you go on the Independent Warehouses payroll?
A. I don't know the date.
Q. Look at your previous testimony. Is your previous testimony correct in that respect?
A. That is right.
Q. What is your answer to the question?

Mr. Minard: What is the page, Mr. Thompson?
The Witness: Page 49.
Mr. Minard: How does it read?
The Witness: (Reading) "By whom are you employed, Mr. Thompson?" The answer is, "By the Independent Warehouses, Inc." The question is, "For how long a time have you been employed by that company?" And the answer, "I have been on their payroll since September, 1929."

Q. Is that correct?
A. Yes.
Q. Now, so far as the area up there, Mr. Thompson, that is necessary for storage, that appears on Exhibit P-1 as the circular piles, is that correct?
A. I never saw the exhibit.
Q. The area necessary for actual storage are the circles which appear on the floor plan lettered from A to E, and also the broken circle spaces above the floor plan?

Mr. Bain: The question is objected to upon the ground [fol. 268] that the licensing ordinance of the Township of Saddle River does not provide for a license fee based upon the area necessary and actually used for the maintenance of coal piles.

A. That is the floor space which coal can be stored on.

Q. That is the floor space which coal can be stored on?
A. Yes.
Q. And you do not store coal at any other place except in those areas?
A. Only where it has been provided for with machinery.
Q. That is the only area which has been provided with machinery?
A. Yes.
Q. In the area embraced in the circles that we called your attention to?
A. That is right.
Q. There is about 25,000 tons capacity in each pile?
A. When they are full.
Q. How high are the derricks?
A. Well, I would say——

Mr. Bain: Don't guess at it, if you don't know.

A. (Continuing:) I never measured that, but just from the testimony given today it is supposed to be 65 feet high.
Q. You would not say they are higher than that would you? You don't know?
A. I have been on top of them, but I don't know as they are much higher than that.

Mr. Chandless: That is all.

Redirect-examination.

By Mr. Bain:

Q. Mr. Thompson, while Pattison & Bowns were in possession of the coal storage plant at Coalberg, were you [fol. 269] there every day?
A. I don't get what you mean by that, was I there every day.
Q. Yes; every day of the week?
A. No, I wasn't there every day of the week.
Q. You didn't work there continuously?
A. Not seven days a week. There was a period when I was off for several months.
Q. What did you do at that time?
A. When I was off?
Q. No, while Pattison & Bowns were in possession and control of the coal storage plant?

A. Kept a record of their tonnages. They stowed all the coal then, at that time.

Q. The Independent Warehouses, Inc. were not storing the coal at that time, at the plant?

A. They did not store any coal.

Q. They issued warehouse receipts, did they?

A. In the name of other companies that had put coal in there.

Q. That is, when Pattison & Bowns sold their coal to other companies and the other companies who purchased the coal desired warehouse receipts, then Pattison & Bowns notified you of the sales by them and the fact that negotiable warehouse receipts were desired, and you would notify the Independent Warehouses, Inc.?

A. No. Independent would send me a letter stating they had issued warehouse receipts covering tonnages, like the Knickerbocker Ice or the New York Trust Company.

Q. That was in the nature of spot storage done by Independent for Pattison & Bowns?

A. All the coal was not out on warehouse receipts; only some tonnages.

Q. A comparatively small part?

A. That is right.

[fol. 270] Q. As to that part, Independent Warehouses, Inc. acted as field warehousemen for Pattison & Bowns?

A. I would say so.

Q. Who paid you at that time?

A. As I said before, originally Pattison & Bowns.

Q. Up to 1939?

A. No. It was previous to that. I was only on Pattison & Bowns payroll, I think, a short while.

Mr. Chandless: Then you went on the Independent Warehouses' payroll?

The Witness: Then I went on Independent Warehouses' payroll.

Q. But Independent Warehouses, Inc., while Pattison & Bowns were in possession and control of the coal storage plant, acted as warehousemen for the purpose of issuing warehouse receipts at the request of Pattison & Bowns, to customers of Pattison & Bowns?

A. That is correct.

Q. Those conditions were entirely changed from 1939,

when the Independent Warehouses, Inc. went into possession of the entire plant as commercial warehousemen?

A. As I said before, there were only a few customers that requested the warehouse receipts.

Q. While Pattison & Bowns were in possession?

A. While Pattison & Bowns were in possession, and operated the plant.

Q. But there were many customers who requested them after Independent went into possession?

A. That is right.

Q. It is incorrect to say that the business has been carried on in the last fifteen years in the same manner, in so far as the Independent Warehouses, Inc. and Pennsylvania Coal Company or anybody else is concerned?

A. That is right.

[fol: 271] Q. Mr. Chandless asked you as to the capacity of the various piles. Were they ever completely filled to full capacity?

A. The entire plant?

Q. Yes.

A. No.

Q. At any time in the last five or six years?

A. Not since I have been there; not in the last fourteen years.

Q. Can you state how much of the entire plant is used for purposes of conducting and carrying on the business of storing coal, other than the platforms on which the coal piles are placed?

A. I don't understand the question.

Mr. Bain: Will you read the question?

Q. (The last question was read by the reporter.)

A. The only part of the plant that would be suitable for storage would be these platforms. The other parts would be of no use at all for storage.

Q. The other parts are used in connection with the putting of the coal and storing of the coal on the storage platforms?

A. Yes. You would have to have your tracks reaching to the various hoppers for unloading, and towers for reloading.

Q. And various buildings are used?

A. You have a boiler house, a roundhouse, and an engine house that houses the machinery and electrical equipment.

Q. And some part of the lands around each coal pile on which the men who work on the coal piles can walk?

A. Yes. You have some up and down the track.

Q. Up and down the tracks, as well as the coal piles?

A. Yes.

Q. Do you have a water tank there?

A. Yes.

Q. That is part of the coal storage plant?

A. It is.

[fol. 272] Q. What else is part of the coal storage plant?

A. Don't know. I guess that takes it all in.

Q. In the event of an emergency, would it be possible to throw coal on the ground up there?

A. Not unless you got some emergency equipment in to handle it; a crane, and so forth.

Q. It could be done?

A. Our coal is all handled——

Q. If you had to increase the capacity of the plant there would be room for expansion, wouldn't there?

A. There would.

Mr. Bain: That is all.

Recross-examination.

By Mr. Chandless:

Q. These tracks and towers that you refer to, they are the tracks which are also used by the N. Y. S. & W. for the purpose of making up freight trains?

A. Yes.

Q. The cars come in on those tracks?

A. They also use those tracks to classify cars that come in for unloading at the plant, and other cars that come in for, say, anywheres in that locality. They drill them out and classify them and group them in different tracks.

Q. You use the tracks jointly with the New York, Susquehanna & Western Railroad?

A. That is right.

Mr. Minard: Some of them?

The Witness: Some of them.

Q. The towers that you talk about are the derricks? Is that what you mean by towers?

A. No. The towers are located over the rails. They have big gears and chains in them, to draw the coal up to the chute, to let down over the coal cars.

[fol. 273] Mr. Bain: To load cars?

The Witness: Yes.

Q. The floor area involved in each one of those towers would be about how much?

A. I don't know offhand.

Q. Twenty by twenty, ten by ten, thirty by thirty?

A. It would be a guess if I said.

Mr. Bain: Don't guess.

Q. But you know about how large an area there is?

Mr. Bain: We have the actual area testified to by the witness.

Mr. Chandless: No, not on the towers.

The Witness: I couldn't answer that very well. Mr. Snyder is more familiar with the machinery than I am.

Q. Are they twenty by twenty?

A. I couldn't tell you.

Mr. Minard: The answer is, he doesn't know.

Q. Describe one of them, so that we will know what they are.

A. A tower is a tower. That is all I can say.

By Mr. Bain:

Q. Does it stand straight up in the air?

A. It does.

Q. Is it made of metal or wood?

A. Steel beams and wood.

Q. How high is it?

A. I would say about thirty feet high.

Q. About how square is it at the base, if it is square?

A. Probably ten by ten.

[fol. 274] Q. Does it have arms that extend out?

A. It is a chute.

Q. Does that extend over the coal platform?

A. To let down over the coal cars.

Q. Not over the platform?

A. Oh, no. Directly above the track.

By Mr. Chandless:

Q. So that the chute will go down into the car?

A. That is right.

Q. How big are the engine houses that you spoke of?

A. I think they are about twenty-five by forty.

Q. Each one of them?

Mr. Minard: They are not all the same shape.

A. Some are a little larger than others. An average would be about twenty-five by thirty.

Q. Those are little buildings which appear between the circular piles and the railroad tracks, is that correct?

A. Yes.

Q. The water tank, how large is that?

A. I don't know. I don't know the capacity of that.

Q. That is the tank which is located, so far as the diagram goes, just above the building which constitutes the office?

A. That is right.

Q. The office is located in between the piles of coal, isn't that right?

A. That is right; in front of the pile.

Q. You say that you use that in the operation of the coal plant; that is used in the washing of the coal?

A. If we have the kind of coal that we need to wash.

Q. I think Mr. Snyder said that you washed all that coal except buckwheat?

A. Rice and barley.

[fol. 275] Q. Rice and barley are the two that are not washed?

A. That is right.

Q. I think on your previous testimony you testified that considerable of this coal was sold in this neighborhood?

Mr. Minard: He didn't say any such thing.

Mr. Chandless: He can deny it.

Mr. Minard: Well, he does deny it. These are trap questions. You are a trap shooter, but you are not a cross examiner.

A. For what period are you referring to?

Q. What do you mean, "what period"?

A. That this coal was sold in that neighborhood?

Q. You previously testified to a portion of this coal being sold in the neighborhood.

Mr. Minard: When did he testify to that?

Mr. Bain: I ask that he be confronted with the testimony given before.

A. The bulk of the busines was with the Edgewater Coal Docks.

Q. Don't you load coal for points in New Jersey?

A. Oh, yes, we have some accounts in New Jersey. We have had them in Maine and Massachusetts, Long Island.

Q. As a matter of fact, that yard takes care of most of Northern New Jersey, and has for years?

A. No. I would say the plant was more of a tidewater business.

Q. But it does do some local business?

A. Some local business.

Mr. Minard: Mr. Chandless, there is not a ton of coal that is sold at that plant. That has been testified to by so [fol. 276] many people that handle the business. I don't see why this witness should be asked that question and be trapped into an answer.

The Witness: It is not sold at the plant, but stored at the plant for some local customer.

Mr. Minard: Who bought it in Pennsylvania.

The Witness: What I mean by local is Passaic and Bogota.

Mr. Bain: Mostly industries who use the coal?

The Witness: That is right. There is nothing sold.

Q. As a matter of fact, you had a lot of coal there for Bogota, or did have?

A. We had some for Bogota. We have some yet.

Q. You said that you were on Pattison & Bowns' payroll for a short time? I think you said you had been there from 1929. About how long were you on Pattison & Bowns' payroll?

A. I don't know whether it was a year or not. Something like that.

Q. The balance of the time you were on the Independent payroll?

A. Yes.

Q. As I understand it, the Independent Warehouses paid you a salary to carry on this business, as you have described it, is that right?

Mr. Bain: From what time on.

Mr. Chandless: From 1930 on.

Q. When was that, this period that you were on Pattison & Bowns' payroll?

A. That was around 1930.

Q. From 1930 on you were on the Independent Warehouse's payroll?

A. That is right.

[fol. 277] Q. And you were getting the same money that you get now?

A. No.

Q. Or about the same money?

A. It is about the same.

Mr. Chandless: That is all.

Redirect examination.

By Mr. Minard:

Q. Mr. Thompson, you spoke about most of the coal going to the Edgewater Dumpers. At the dumpers is it loaded into barges and continued in shipment to final destination?

A. Yes.

Q. That is a continuance of the shipment into storage?

A. Yes.

Q. This coal that belongs to companies in New Jersey, that coal all comes from Pennsylvania on this tariff arrangement, doesn't it?

A. Yes.

By Mr. Bain:

Q. This dumper that you speak of is a dumper used for dumping coal out of coal cars into barges or vessels?

A. That is right.

Q. For continued transportation?

A. That is right.

By Mr. Chandless:

Q. About how long does this coal stay there? In other words, it comes in in carloads of about how much?

A. It is hard to say. We dump it one day and pick it up the next week, and, then again, it will lay there for a year.

Q. Normally, could you fix a period of time as to about how long it stays there?

A. That is pretty had to say. It all depends on the demand.

Q. Would you say that the last three years, 1941, 1942 and 1943, are years in which the demand exceeded the supply? Is that correct?

[fol. 278] A. That is probably from a mining standpoint. They might know; but in our place we just fill the orders as they request.

Q. You said something about it depending on the demand. In other words, the coal is moved out pretty fast now? You know that?

A. Not out of our place. It is not coming in.

Q. In other words, the customer cannot get it from the mine? Is that the situation?

Mr. Minard: How does he know that?

A. I don't know.

Mr. Chandless: All he has to do is to tell us he doesn't know.

Mr. Bain: As a matter of fact, the coal has got to be shot right to the destination now. There is such a rapid demand for it, and they cannot build up a stock pile as they have done before.

Q. Prior to 1941 they were able to build up the stock pile, is that right?

A. Well, I would say our tonnage is better than it has been since then.

Q. The coal came in, normally, in the late spring and summer?

A. Well, I would say in the summer, the late summer. We bill our coal out up until the late spring.

Q. Then you build up a stock pile, and it starts moving out about, when?

A. About December.

Q. When does the yard get, ordinarily, to its lowest point?

A. I would say, actually, in the spring, when our winter business is over.

Mr. Minard: You don't have to guess at that. Our exhibit shows on the first of each month the amount of coal in storage, so you don't have to guess at anything there.

[fol. 279] Q. Then, you say the average period of time for coal there in normal times would be about six months?

A. No.

Q. You say that it comes in in the late spring and goes out in December?

A. It wouldn't go out in December because there would not be a demand for it.

Q. All this coal comes in consigned to Coalberg, is that correct; I mean the destination?

A. It is consigned to Coalberg, Rochelle Park, for storage.

Mr. Chandless: That is all.

Redirect-examination (continued).

By Mr. Bain:

Q. This storage at Coalberg is overlapping, isn't it? That is, one shipper might place 50,000 or 100,000 tons of coal in that plant in the spring, and he might dispose of it or trans-ship or re-ship the whole 50,000 tons by the fall, until he might not have any coal stored over the winter. That is one instance? Might that not occur? He might ship from the mines for storage 50,000 tons, to be stored at the coal storage plant, and he might order that entire 50,000 tons re-shipped before a year expires?

A. Yes.

Q. He might order it shipped at the end of one month, two months, three months?

A. As I said before, it might go out the next week.

Q. If he did that he might put in an additional 50,000 tons during the summer?

A. Yes.

Q. He might dispose of that 50,000 tons before the following winter?

A. That is right.

Q. Or he might put in 75,000 tons in the spring and dispose of 50,000 tons before the next winter season, and he would have 25,000 tons left?

A. Yes.

[fol. 280] Q. Another shipper might put in 100,000 tons in the early spring and sell 100,000 tons before the next shipment, and another shipper might put in 50,000 or 100,000 tons in the late summer and sell 75,000 tons in that month, which would leave 25,000 tons over for the following season. It is an overlapping storage?

A. Yes.

Q. It is not the same identical coal that is carried along for any continuous period? It is coal brought into the plant at different times?

A. Yes.

Q. Although that shipper might have coal brought in there for two years, it would be a different shipment of coal at the end of two years than he might have at the beginning, if I make myself plain?

A. No, I don't get that.

Q. The coal that may remain there for two years, belonging to any one shipper, is not coal that was received at the beginning of the two-year period and remained there continuously for the two years; in other words, he might have received coal at the beginning of the period and sold it, put in other coal and sold that, put in some other coal, and that would be there at the end of the two-year period. All that coal belonging to that shipper would not have been there for two years, is that correct?

Mr. Bain: That is all.

By Mr. Chandless:

Q. But, if the shipper's business was bad, he might ship in 50,000 tons, and it might lay there for a year and a half, isn't that right?

A. If his business was bad? Not today.

Q. Depending upon what conditions might be in the trade?

A. Yes.

Mr. Chandless: That is all.

[fol. 281] CERTIFICATE OF SUPREME COURT EXAMINER

New Jersey Supreme Court

INDEPENDENT WAREHOUSES, INC., a corporation of the State of New York, Pennsylvania Coal Company, a corporation of the Commonwealth of Pennsylvania, and Erie Railroad Company, a corporation of the State of New York, intervening parties, Prosecutors,

vs,

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a municipal corporation of the State of New Jersey, Defendants

JAMES THOMPSON, Prosecutor,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a municipal corporation of the State of New Jersey, Defendants

I, Louis Kabot, a Supreme Court Examiner of the State of New Jersey, do hereby certify that the foregoing depositions [fol. 282] of Francis J. Brust, Fred V. Lynn, Roy W. Radcliffe, David D. Jamieson, Thomas J. Snyder, John T. McCormack and James Thompson, witnesses on behalf of the Prosecutors in the above entitled matters, were taken by and before me at the time, place, and on the date hereinbefore set forth; that the witnesses were first duly sworn be me according to law; and I further certify that the foregoing is a true and accurate transcript of the testimony as taken.

Louis Kabot, A Supreme Court Examiner of New Jersey.

[fol. 283] Testimony

Transcript of stenographic notes of testimony taken in the above entitled matter at the offices of Chandless, Weller & Kramer, Esqs., 84 Main Street, Hackensack, New Jersey, before Nicholas Bindseil, a Supreme Court Examiner.

APPEARANCES:

Ralph W. Chandless, Esq.
Robert J. Bain, Esq.
Duane E. Minard, Esq.

Mr. Chandless: I know that Mr. Fox wants to get away so I will put him on first. Will you come over here, please, Mr. Fox?

FRANK J. FOX, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Chandless:

Q. Mr. Fox, you are in the coal business?
A. Yes, sir.
Q. And located at Fairlawn in New Jersey?
A. Yes.
Q. And you have been in the coal business how long?
A. Sixteen years.
Q. Are you familiar with the values of coal at Saddle River Township in Bergen County, New Jersey?
A. Yes, sir.
Q. I show you what appears to be a price list of Pattison & Bowns, as of November 24, 1943, and I ask you whether, [fol. 284] can you tell us, or does that represent the value of coal as of the present time?
A. Yes.
Q. Will you give us in figures the value of a ton of grate coal at Saddle River Township?
A. A ton of grate coal at Saddle River Township is $8 per net ton and with a cash discount of fifteen cents a net ton. Along with that you have a gross freight rate of $2.30, bringing it to a net ton shipped at the mines, $8, as based on that, to a $2.05 net ton, on grade A stove and chestnut——
Q. —which places the total at $7.85 plus $2.05?
A. That is right.
Q. Now, is there any other item of taxes which goes into the cost of coal at Saddle River Township?

Mr. Bain: I object unless he knows.

Q. If you know.
A. No, there *is* no other taxes.
Q. Isn't there a four-cent per ton transportation tax?
A. There is a four-cent federal tax which, of course, is passed right on through the trade.
Q. Is that included, I am asking?
A. It should be.

Q. In other words, it doesn't go on top of that?

A. No.

Q. Then, you would say that grate coal at Saddle River Township would be $7.85 plus $2.05 or $9.90, is that correct?

A. Yes, sir.

Q. Will you give us the figures as to egg coal?

A. Egg coal?

Q. Yes. Will it be the same?

A. Yes. I cited egg, grate, stove and chestnut, all being of the same freight rate and same price per net ton.

Q. The same discount?

A. Yes.

[fol. 285] Q. What have you got to say as to pea coal?

A. Pea coal, $6.45, with a cash discount of ten cents a ton and a net freight rate of $2.01.

Q. Per ton?

A. Yes, per ton.

Q. Or a total of what?

A. And the ten cents discount, bringing it down to $6.35 and $2.01 freight.

Q. Or $8.36, is that right?

A. Yes.

Q. What about the buckwheat coal?

A. Buckwheat coal is $4.80 with a ten-cent discount. That has a $2.39 gross freight rate with a net of $2.14. The same thing applies to buckwheat, rice and barley. The price of rice coal at the mines, F. O. B. is $3.85, with a cash discount of five cents, and bringing the price down to $3.80, F. O. B.

Q. All right. Now, it is a total of how much at Saddle River?

A. Bringing it up to $5.94 per net ton.

Q. Now, what have you got to say as to barley?

A. Barley, F. O. B. at the mines, is $2.85 with a cash discount of five cents, $2.14 freight rate, five cents a ton discount, which is $4.94.

Q. We want the total, what is the answer?

A. $4.94 on the barley.

Q. Now, those prices are presently O. P. A. prices?

A. Yes, sir.

Q. What have you to say as to those prices as compared with prices of other mines?

Mr. Bain: If he knows.

Q. If you know?

A. They are the same as the prices from other circulars I received from other operating companies. They are in line.

Q. How much increase in prices has there been, if any, during the past, since 1941?

A. Since O. P. A. went into effect, there was an increase [fol. 286] of price of seventy cents. It went into effect on November 24, 1943, allowed by the O. P. A. Those prices continued up to February 1, 1944, when the O. P. A. granted an increase of forty-five cents a ton for the month of February only.

Q. Then it was taken away?

A. Yes, it went back, it has gone back to the price of January.

Q. When?

A. Of January in 1944.

Q. So, then, do the prices that you have given us, compare with the prices in 1941?

A. The present prices as to 1941?

Q. Yes. About how much difference is there? You don't have to be exact.

A. There was another difference there. It is about the same since 1941. That is the circular price.

Q. So, that there has not been much variation in values during the last seven years?

A. In the last few years, not several years.

Q. Well, since 1941 on, the price has been more or less standardized at about those prices?

A. Yes. They vary. You have your summer prices. There are the reductions and, of course, there is a period where they increased so much each month.

Q. Can you tell us who Pattison & Bowns are?

A. They are in my opinion——

Mr. Minard: We don't want his opinion.

Q. Are they located in Saddle River Township?

A. Yes, sir. They are located at Saddle River Township.

Mr. Chandless: I will offer this in evidence. Cross-examine.

(Received as Exhibit D-1.)

[fol. 287] Cross-examination.

By Mr. Minard:

Q. When you say Pattison & Bowns are at Saddle River Township, do they have an office there?

A. Not from a selling angle, no.

Q. Do they have any office there?

A. Well, clerical work.

Q. Who works for them doing their clerical work?

A. Pattison & Bowns?

Q. Yes.

A. I just forget the gentleman's name now.

Q. Are you talking about one of these gentlemen here?

A. Yes, sir.

Q. They don't work for Pattison & Bowns?

A. That is the gentleman I met over there (indicating a man seated at the counsel table).

Mr. Chandless: It is in his opinion that he worked for Pattison & Bowns.

Mr. Minard: I didn't ask him for his opinion.

Q. Did you ever do any business with Pattison & Bowns at Saddle River?

A. No.

Q. So that is just your impression, that which you are talking about, is that right?

A. Well, yes.

Q. All right. Now, this is the winter prices for 1943 and 1944, aren't they, in that price list you have given?

A. Yes, sir.

Q. What were the prices in May of 1943?

A. May of 1943?

Q. Yes.

A. Those prices are—may I refer to my own circular?

Q. What is that?

A. May I refer to my own circular?

Q. Well, if you have any definite information—what are you referring to now?

A. To the Delaware, Lackawanna & Western Coal Company.

[fol. 288] Q. Of what date?

A. This was printed on January 7th and it went into effect in January of 1943.

Q. Covering what period of time?

A. The period of time up until the following change was made on November 24, 1943.

Q. That covered the period from January to November of 1943?

A. Yes.

Q. What was the difference in prices between that period, from the one of 1943 onward, that you referred to?

A. Seventy cents a ton.

Q. Less?

A. More.

Q. What? In the summer time more than in the winter time?

A. Well, it went through the entire period. The prices were set up by the O. P. A. on January 9th, which went through at seven-thirty at that time, went through to November 24, 1943.

Q. And then the price went up to $8, is that right?

A. Yes.

Q. Now, then, prices are now controlled by the O. P. A., are they not?

A. Yes, sir.

Q. Now, this price of coal that you refer to as F. O. B. Mines, isn't it?

A. That is right.

Q. On a short ton of two thousand pounds?

A. Yes.

Q. Now, this price list that you say, that you refer to in the beginning, Pattison & Bowns price list states our prices for Pittston coal as authorized by the Office of Price Administrator and effective November 24, 1943, and until further notice, per net ton of two thousand pounds, F. O. B. mines, with discounts and so forth, as you have stated it, is that right?

A. Yes, sir.

Q. That was merely an announcement of O. P. A. prices, wasn't it?

A. Well, published by the O. P. A. We also have circulars in our office.

[fol. 289] Q. Well, O. K. Do you buy coal from Pattison & Bowns?

A. No.

Q. You never bought any coal from them?

A. No.

Q. You never had any business relations with them?

A. No.

Q. How did you come to be talking with one of these gentlemen there?

A. I happened to notice him for a year back. He approached me for installations of a stoker in his home. I was at the office.

Q. That was a private transaction between you and which one?

A. Mr. Thompson.

Q. You didn't know, of your own knowledge, who Mr. Thompson's employer was, did you?

A. No, I don't know offhand. I could find out. I think when he made application, I have that information.

Q. Well, he can tell you himself for that matter?

A. Yes, sir.

Q. Now, those are the prices to retail dealers, is that right?

A. Retail dealers?

Q. Yes.

A. Yes.

Q. What the prices are at the mines, you do not know, do you?

A. Whether I know what the prices are at the coal mines?

Q. Yes, do you?

A. Certainly. It tells you right in the circular, F. O. B.

Q. You don't know what Pattison & Bowns pays at the mines, do you?

A. According to the O. P. A. ruling they are supposed to pay circular prices.

Q. Yes, but that is not this price, is it?

A. No.

Q. You said that the federal transportation taxes, as I understand you to say, that the federal tax is not added to the price of coal that you sell it for?

A. Yes.

[fol. 293] Q. So the retail price includes the four cents per ton?

A. Yes.

Q. A flat rate?

A. Yes.

Q. Now, what was your selling price on these coals at the time?

A. What do you mean?

Q. For instance, grate coal as listed here, $8 minus fifteen per cent discount?

A. We sold it for $.54 net ton and delivered into the customer's coal bin.

Q. What expenses did you absorb in that difference? Did you absorb the four cents a ton federal tax?

A. I absorbed it to the wholesale company, in other words, when I am buying from the Pattison & Bowns Company, they charge per ton so much and then on the bottom is the tax of four cents per net ton. We pass it on to the customer.

Q. Do you pay the freight rates on that coal?

A. Yes, sir.

Q. Plus the price listed here of $8?

A. Yes.

Q. Was there any other charge that you absorbed except the freight rate?

A. No.

Q. That, of course, is included in your retail price?

A. That is right.

Q. So, the difference between $8 minus the fifteen per cent discount, plus the freight rate and the retail price was your profit or your compensation for operation?

A. Yes.

Q. All right. Now, assuming it was necessary to add to the price of this coal a $1.50 per ton for license fee, would that affect the source of purchasing coal?

A. I would not know. I am only concerned with what I can buy it for and in my spread of margin and to continue to stay in business.

Q. If because a different company, or a given company, stored coal at Coalburg and a license fee amounted to $1.50 a ton, you would not buy coal from that concern?

[fol. 291] A. I would if they were under O. P. A. ruling and circular prices. Otherwise, that is none of my business.

Q. If that had to be added to the price of coal, anywhere along the line, you would not buy coal there?

A. Well, it is up to them to meet the other operators' prices. If they are charging $1.50 more, they would not do any business.

Q. What would be the effect of twenty-four cents increase on that coal, would that interfere with it?

A. No. We generally apply before the O. P. A. and we find that we can't operate, that there has been an increase, affecting our profit, it is up to the O. P. A. to grant us an increase. However, they don't always.

Q. If one coal company because it stores at Coalburg had to charge twenty-four cents a ton more, you would not buy from that company?

A. You have a coal company which is a retailer and operator and which is a wholesaler.

Q. Pattison & Bowns don't mine coal, you know that?

A. Yes, sir.

Q. If a wholesaler had to charge twenty-four cents a ton more because he stored at Coalburg, would you buy coal from him?

A. Not if it is going to make a difference in my profit. You have your prices set up both wholesale and retail by the O. P. A. They can't go out and get more.

Q. In other words, they cannot increase the prices of their coal?

A. Unless the O. P. A. granted it.

Q. If the O. P. A. granted to a coal company, which stored its coal at Coalburg, twenty-four cents increase a ton, you would not buy from that company, would you?

A. I would, if they were still in the circular.

[fol. 292] Q. If you could buy from one company at $8 and have to pay $8.24 to another company, you wouldn't buy from it, would you?

A. (No answer.)

Q. Would you or wouldn't you?

A. No, I would not.

Q. Then, all right. If the increase was twenty-one cents per ton, you would not buy from a concern that you had to pay twenty-one cents more per ton to, would you?

A. Yes, if the quality was there and if the O. P. A. granted it, I would.

Q. So that the twenty-one cents wouldn't bother you at all?

A. Twenty-five cents you can always get as a premium if you have the quality.

Q. If you had an opportunity to buy from the source or Pattison & Bowns, and it was twenty-one cents different, where would you buy the coal?

A. From my regular outfit.

Q. You would not pay the twenty-one cents?

A. No

Q. You don't have a coal yard in Saddle River Township, do you?

A. No, in Bergen County.

Cross-examination.

By Mr. Bain:

Q. Are you a retail coal dealer?

A. Yes, sir.

Q. Not a wholesaler?

A. No.

Q. You haven't bought coal F. O. B. at the mines?

A. Yes, I bought thousands of tons.

Q. You still buy it that way?

A. No. I generally call up the main office and tell them to ship me four nut or four stove or ten pea, whatever it may be, and they have their own way of transaction. I bought coal on the ground and watched it go through the breakers.

Q. How long ago was that?

A. In 1936.

Q. And since that time you bought no coal F. O. B. at the mines?

A. No.

[fol. 293] Q. And you say you called up the main office, do you mean the main office of a wholesaler?

A. That is right.

Q. That is one who deals wholesale in coal?

A. Both.

Q. How long did you buy Pittston coal?

A. I never bought any.

Q. You always bought from the other mines?

A. Since we started Blue Coal, the D., L. & W.

Q. You never sold any coal under the name of Pittston?

A. No.

Q. You produced a circular here and gave some testimony from it as to the prices of Pittston coal at the mines, with some subtractions and additions?

A. Yes.

Q. They are those what you might call prices to the wholesaler?

A. The circular?

Q. Yes, do they show prices to the wholesaler?

A. No. The wholesaler shows prices to the retailer.

Q. What do the prices show on the circular?

A. To the retailer.

Q. To the retailer?

A. That is right.

Q. And then you say that the prices at which the retailer sells to the consumer are considerably higher in order to take care of the retailer's operating expenses and profit?

A. That is right.

Q. The wholesaler prices are indicated by the circular and the retailers' prices to the consumer are fixed by the O. P. A., are they not?

A. Definitely so.

Q. And they have been that way how long?

A. Since 9/43. And that is when the federal tax went into effect also.

Q. I think you testified that the prices shown upon the circular, from which you testified, the retailer prices can-
[fol. 294] not be increased to take care of any additional expense without the consent of the O. P. A.?

A. Yes, it is by order issued by the O. P. A.

Q. Are you sure the freight rate on buckwheat coal is $2.39; rather, isn't it $2.38?

A. Well——

Q. At any rate, it is a small detail.

A. No. It is $2.39.

Q. Well, it's a detail anyway.

A. It is $2.38 here.

Q. The prices charged by the retailer to the consumer fluctuate with various seasons, do they not?

A. They have in the past, but they have been uniform during the past two years.

Q. Mr. Fox, is your entire knowledge as to the prices of Pittston coal taken from this circular?

A. No, because I don't purchase coal from them.

Q. Your answer is yes?

A. After all, if they send me circulars out and the salesman goes out and makes another proposition, it is not to my knowledge.

Q. Have you any other knowledge as to the prices and deductions charged to wholesalers for Pittston coal other than that mentioned in this circular?

A. No, I don't know.

Q. Your entire testimony is taken from the circular?

A. That is right.

Q. When did you get that circular?

A. This particular circular?

Q. Yes.

A. I think that circular is out on November 24, 1943.

Q. When did you get it?

A. Well, it comes in regularly through the mail. What date it was, I don't know. We get the different companies', we get their circulars right along. We are on their mailing lists, whether we buy from them or not.

Q. You never sold any Pittston coal during the last several four or five years?

A. No.

[fol. 295] Q. You don't know the prices charged by the Pittstown Coal Company to the consumer except from prices fixed by the O. P. A.?

A. What do you mean?

Q. The prices charged by the retailer to the consumer of Pittston coal?

A. Yes. The same prices. That is an O. P. A. ruling.

Q. It is a uniform price?

A. Yes.

Q. And the only knowledge you have *to* the prices charged for Pittston coal is that obtained from the O. P. A. price list?

A. That is right.

Q. I think you said that those prices fixed by the O. P. A. cannot be changed except with consent of the O. P. A.?

A. That is right.

Q. If some additional charge, to either the wholesaler or the retailer, was placed upon the coal, would that charge have to be added to the price charged by the retailer?

A. No, not particularly. We have one ruling to go by. We cannot increase or decrease our prices other than file with the O. P. A. The same thing applies to the wholesaler.

Q. That is, there could be no addition to the price charged for the coal at the mines to the wholesaler and no addition to the price charged by the wholesaler to the retailer and no addition to the price charged by the retailer to the consumer without the approval of the O. P. A.?

A. I would not go back that far because I am not acquainted with them. I wou'dn't know what happened to the producer and the wholesaler.

Q. In any event, as far as the wholesaler and retailer is concerned, there can't be anything added to the prices without the O. P. A.'s approval?

A. Yes, sir.

Q. And that has been proved for the last two years?

A. That is right.

[fol. 296] Q. You sell in Saddle River Township?

A. Yes, within a fifteen-mile area.

Q. That includes Saddle River Township?

A. Yes, sir. Today it is different. We have zones set up by the O. P. A., and whatever zone you have, that is the price they set up.

Q. Your prices in Saddle River Township are the same as charged by any other dealer in that district for coal delivered to the consumer?

A. Yes, sir.

By Mr. Minard:

Q. Now, just a question or two. Do you use field storage?

A. Ground storage?

Q. Yes.

A. Yes.

Q. How do you operate that?

A. Why, we have conveyors to unload our cars in to the storage bins, which is just dumping out that square box and it goes down to the ground.

Q. What I mean by field storage is, do you have a warehouse company that handles that coal for you and issues warehouse receipts for it?

A. No.

Q. Why did you select this circular of November 24, 1943, if you have them regularly?

A. That is the last one that has been issued.

Q. All right. That is all.

By Mr. Bain:

Q. I want to ask you a further question. Where is your yard located?

A. My yard is located at 1 Erie Place, Fairlawn, New Jersey.

Q. Fairlawn adjoins Saddle River Township, doesn't it?

A. One part of it, yes.

Q. You don't have to pay any license as a coal dealer in Fairlawn, do you?

[fol. 297] Mr. Chandless: I object on the ground that it is immaterial. It is a different municipality and isn't or wouldn't be binding on the defendants in this case whether he paid taxes there or didn't pay taxes. All right, you may answer now.

Q. Do you have to pay any license fee as a coal dealer having a yard in Fairlawn?

A. We pay one to the state and that is all.

Q. What license fee do you pay to the state?

A. A truck license.

Q. That is a truck license and nothing else?

A. Not the motor vehicle license. It is what they call a coal dealer license.

Q. What sort of license is it?

A. It is a tag.

Q. Is it a license to operate trucks?

A. No. You do operate a coal truck, yes.

Q. But, it is not a license to do the coal business, the coal retail business?

A. Every truck in the state of New Jersey has to be listed.

Q. Whether it is a coal truck or any other kind of truck?

A. It is a fuel license, and has nothing to do with the truck.

Q. Oil trucks pay the same license fee?

A. Oil trucks, I don't know.

Q. That is a license to operate trucks, isn't it?

A. Over the road, yes.

Q. Over the roads.

A. Yes, sir.

Q. That is not a license to do the coal business?

A. Yes, sir. You also have to have, if you are in the coal busines, you have to have that license tag on your coal truck with a registered number.

Q. That is the same kind of license as a store would have in the event it uses delivery trucks, isn't it?

A. Not motor vehicle licenses. Is that what you refer to?

[fol. 298] Q. Isn't this a motor vehicle license you are speaking of, it is a truck license?

A. It is a coal truck license. The license tag is a motor vehicle license. It is two different licenses.

Q. But the state has no license for carrying on of a coal business, has it?

A. No. This license tag is a weights and measures license tag to operate a coal truck.

Q. It is under the weights and measures department?

A. Yes.

Q. But, there isn't a coal dealer's license issued in the Town of Fairlawn, is there?

A. Yes, sir.

Q. There is none?

A. No.

Q. You sell in competition with coal delivered to the consumers in Saddle River?

A. There is competition wherever we go.

Q. Are there any other coal dealers operating in Saddle River Township?

A. I don't know of anyone registered right in the Township, that is, a siding and operating a yard.

Q. You don't know of any other coal yard?

A. Other than Ferrara, no.

Q. Is there one that you know of in Saddle River Township?

A. Yes.

Q. There is one coal yard in Saddle River Township?

A. Yes, sir.

Q. Do you know what kind of coal that yard handles?

A. No.

Q. But you do sell in Saddle River Township, don't you?

A. Yes, sir.

Q. That is all.

By Mr. Minard:

Q. How many municipalities do you do business in, in the coal business?

A. In Hawthorne, Haledon, Paterson, Fairlawn, East [fol. 299] Paterson, Clifton and Saddle River, Rochelle Park, Arcola and Paramus and Ridgewood and Glen Rock.

Q. Do any of those in these municipalities have a licensing ordinance to conduct a coal business?

A. I don't conduct a coal business.

Q. You do business in those municipalities?

A. Yes.

Mr. Chandless: I object to this.

Q. Do any of those municipalities impose a business license fee for doing a coal business?

A. To deliver in that town, no.

Q. To conduct any coal business?

A. I don't know. I know only about my own community.

Q. You have no municipal license in Fairlawn?

A. My yard is in Fairlawn. Deliveries are made in these towns.

Q. Do you have any municipal licensing ordinance in Fairlawn applying to coal yards?

A. None other than our regular taxes and that is high enough.

Q. Of course it is. We all realize that. Do you know whether there is a licensing ordinance in any of these municipalities to conduct a coal business?

A. Not to my knowledge.

By Mr. Bain:

Q. Where is the wholesaler's yard located from where you get coal?

A. Where the yard is located, the wholesaler from whom I get my coal?

Q. Yes.

A. I get my coal in by car load.

Q. It comes by car load lots?

A. That is right.

Q. All right, that is all.

By Mr. Chandless:

Q. Mr. Fox, you, of course, pay taxes?

A. Yes.

Q. You stated you pay taxes to Fairlawn?

[fol. 300] A. Yes, to store my coal. When the tax assessors come around, in fact, I——

Q. Just answer my question.

A. Yes.

Q. All right, now. You say when you buy coal that it comes by car, is that right?

A. Yes, sir.

Q. To your knowledge of the coal business, it would be very convenient for the wholesaler to have a place of storage, wouldn't it, whereby he can deliver that coal whenever he wants it without having to come through the mines?

A. Mine delivery is a whole lot longer.

Q. And that convenience, having the coal right located close at hand is worth something in money, isn't it?

A. Yes, I would say so. If I were buying from P. and B., it would be a convenience.

Q. And the O. P. A. regulation, there is no question, in your mind that they make Pattison & Bowns, or anybody else, their prices the same as the prices you buy?

A. Yes.

Q. No question about that?

A. Yes.

Q. Now, as a matter of fact, before the O. P. A. regulations, all the big wholesalers had about the same prices?

A. Yes.

Q. All maintained about the same prices?

A. Yes.

Q. As a matter of fact, they were, before the O. P. A., they were identical prices, to a penny, won't they be so, between the big wholesalers?

A. They just come out, furnish a maximum circular price, that is all, and the discounts the same all over.

Q. No difference in the prices?

A. No.

Q. You said that the prior scale of prices was seventy cents a ton less, January 9, 1943. Now, you meant seventy cents a ton less on egg, stove, chestnut coal, didn't you?

A. Yes, sir.

[fol. 301] Q. What was the price or prices on the others in January?

A. January 9, 1943?

Q. Yes.

A. Well, all we do, we go by the circular.

Q. The mine price, by the circular?

A. Egg, stove and chestnut, there was a seventy-cent differentiation.

Q. What were the other kinds of coal, as appears on your circular? Will you give us the price of those?

A. I think, if I can recall right——

Q. Give them right off the circular.

A. $7.30 for broken, $7.30 for the egg, $7.30 for stove, $7.30 for chestnut, and pea $5.75; for buckwheat $4.20, rice $3.35, and barley $2.50.

Q. That is all.

By Mr. Minard:

Q. Now, Mr. Fox, did you ever buy any coal from any local wholesaler, local storage yards, storage yards of any wholesaler?

A. Why, some retailers consider themselves wholesalers.

Q. I am asking you a question.

A. Not to my knowledge, no.

Q. Do you know of any, of the existence of any local supply yard from which retailers can purchase from wholesalers?

A. No.

Q. All right. Now, do you know why the prices are lower from January to November than they are through the winter?

A. January of this period that you are speaking of to November?

Q. Yes.

A. Other than they want to encourage sales probably.

Q. Isn't that because they want to move as much coal during the summer open season as possible and to avoid congestion during the winter season when the demand is so great?

A. Yes.

[fol. 302] Q. To avoid the congestion that would follow if all the coal was ordered in the winter time when the sales are active?

A. That is right.

Q. That is all.

By Mr. Bain:

Q. As to these increases in prices made in November, 1943, were they increases in the prices F. O. B., the mines, or in prices paid by the wholesalers or by the retailer or by the consumer? What I want to know is whether that seventy cents, for instance, that you mention as the increase in November, 1943, was in the price charged by the retailer to the consumer?

A. The price increase of November, 1943, was granted to the wholesaler by the O. P. A. and we could only follow the wholesale increase. In other words, the dealer got no more, just passed it to the consumer.

Q. In other words, every increase allowed by the O. P. A. was passed along to the consumer. That is all.

Mr. Chandless: That is all, Mr. Fox. Thank you.

CONDITO BELLI, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Chandless:

Q. Mr. Belli, are you the clerk of the Township of Saddle River?

A. Yes, sir.

Q. And did you, at my request, furnish records of the Township?

A. Yes.

[fol. 303] Q. Will you tell us what the present liquor license fees are as fixed by the Township Committee of the Township of Saddle River?

A. $250.

Q. For a retail consumption license?

A. Yes, sir.

Q. That is the ordinary saloon or tavern?

A. Yes.

Q. What was it previously?

A. $300.

Mr. Minard: Previous to what date?

The Witness: I will have to look it up, I will have to look the ordinance up on that. The original ordinance was on December 8, 1933.

Q. That was for how much?

A. $300.

Q. When was the change made?

A. June 12, 1936. That was reduced to $250.

Q. Is there an ordinance of the Township of Saddle River enacted by the Board of Health providing a license fee for rendering plants?

A. Yes.

Q. I show you a copy of an ordinance which was adopted on March 23, 1934, and ask you if you can tell us what the

license fee for a rendering plant was as prescribed by that ordinance?

A. It was $500.

Q. And is this in addition to the license fee prescribed by the ordinance of the Township Committee, is that correct?

A. Yes, sir.

Q. In other words, the license fee, as far as that rendering plant went, was under the two ordinances, $1,000, is that right?

A. That is right.

Q. Now, subsequently, on January 10, 1941, the Board of Health ordinance was amended, is that correct?

A. Yes, the Board of Health ordinance was amended.

[fol. 304] Q. And by that ordinance, what was the license fee fixed at?

A. The license fee for the Board of Health was fixed at $350.

Q. That $350 was in addition to the license fee of the Township Committee, is that correct?

A. That is right.

Mr. Bain: Well, now, is there anything of record to show that?

Mr. Chandless: His testimony plus the ordinances. You don't want the whole ordinance put in?

Mr. Bain: Does the ordinance state it is in addition?

Mr. Minard: When you say in addition, what was the Township license fee at that time?

The Witness: The first time $1,000. $500 to the Township and $500 to the Board of Health.

Mr. Minard: On January 10, 1941, you say it was changed to $350. What was the Township ordinance at that time?

The Witness: $150.

By Mr. Chandless:

Q. So, the total fee for rendering plants was $500 as a result of the changing of the ordinances?

A. Yes, that is right.

Q. Now, will you give us the tax rate at Saddle River Township from 1928 to date?

A. In the year of 1928 it was 5.82 and in 1929 it was 5.90 and in 1930, 5.78 and in 1931, 5.86.

Q. And 1932?

A. It was 5.80 and in 1933 it was 5.32 and 1934 it was 6.17 and in 1935 it was 6.40 and in 1936 it was 5.61 and in 1937 it was 5.15 and 1938 it was 5.53 and 1939, 5.40 and in [fol. 305] 1940, 5.85 and 1941, 5.76 and 1942 it was 5.85 and 1943 it was 5.75 and 1944 it was 5.83.

Q. Now, calling your attention to the assessment roll of the Township of Saddle River, I ask you whether or not there was an assessment for coal levied on coal at Coalburg from 1928.

A. There was a personal assessment on the coal stored at the Coalburg yards.

Q. And that continued right along into what year?

A. That continued down to 1942.

Q. And then what happened in 1942?

A. In 1943 it was taken off the assessment by the County Board of Assessment and so was 1944.

Q. And was the assessmeat paid each year that it was on there?

A. The assessments are paid up to and including the year 1939.

Q. Although there was an assessment levied in 1940, and 1941 and 1942, they were not paid?

A. They were not paid.

Q. Now, what was the amount of that assessment?

A. In what year?

Q. They are the same for each year, aren't they?

A. Well, in 1928 there was a $193,683 assessment and continued down to the year 1932. There is an assessment of $232,420 as a result of a twenty per cent increase ordered by the county board of assessors. In 1932, in 1933 it goes down to $193,600 and continues at that figure to the present 1942 figure.

Q. Now, you are familiar with the ordinance for licensing those engaged in the business of storing goods for hire, aren't you?

A. Yes.

Q. Was there ever any application made for a license under the terms of that ordinance by anybody for the operation of a warehouse at a place known at Coalburg in Saddle River Township?

A. No, there never was an application put in for a license.

[fol. 306] Q. Of any kind or character, either for part or all of the premises, is that right?

A. Yes, sir.

Q. I call your attention to the budget of the Township of Saddle River and particularly to the item——

Mr. Minard: What year?

Mr. Chandless: 1944, the budget for that year.

Q. And particularly to the item of miscellaneous revenues and ask you what was realized by the Township in cash in 1943 for fees and permits?

A. Fees and permits were $2,662.68.

Q. What was realized from licenses?

A. $4,374.

Q. Those represent different items?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. And that represents the auditor's way in setting up those items, is that correct?

A. That is right.

Q. Now, those licenses and fees, when collected from residents of Saddle River Township, were in addition to personal property taxes, weren't they?

A. Yes.

Q. You are familiar with the premises known as Coalburg, aren't you?

A. I am.

Q. Now, will you tell us what is done in Coalburg so far as washing coal there is concerned?

Mr. Minard: Wait a minute. He ought to qualify with some knowledge of that.

Q. Did you ever see them wash coal at Coalburg?

A. I seen them loading cars up.

Q. What did they do?

A. As they loaded they washed the coal. They have two troughs coming down.

[fol. 307] Q. And that causes water to accumulate at that point?

A. Yes, sir.

Q. They wash that in order to get the dust and dirt out of it, is that correct?

A. That is right.

Mr. Chandless: I think that is all.

Cross-examination.

By Mr. Minard:

Q. Where does that water drain to?

A. Into the ditches.

Q. And there are ditches provided for that?

A. Yes, sir.

Q. And they are carried into Saddle River?

A. They are carried into a brook that runs into Saddle River.

Q. Do those troughs that you mentioned empty directly into the ditches?

A. They empty onto the ground and it runs from there into the ditches. Of course, there is a small ditch that leads from the trough that takes it into the ditch.

Q. How many saloons are there in Saddle River Township?

A. Twelve.

Q. You spoke about it—I withdraw that. Why were the liquor licenses fees reduced?

Mr. Chandless: Do you know?

A. Well, offhand, as far as I know, the tavern owners got together and asked for a reduction.

Q. And why was the rendering plant license reduced. Cut in half?

A. That I could not answer. I suppose you will have to get the answer from the Township themselves.

Q. Do you have any complaints about the rendering plant, the smell of it?

A. Not me personally.

Q. You know there are a great many complaints?

A. There have been a few from time to time

[fol. 308] Q. You haven't been around there lately within reach of the place?

A. I have been around there almost every day of the week.

Q. Now, this morning, for instance, I have had some experience with it. Does the smell from the plant permeate the community for a distance of a mile around it?

A. No. I would not say a mile.

Q. How far would you say?

A. I never really measured it.

Q. It is located in back of it, off the road, isn't it?

A. What do you mean?

Q. On Midland Avenue, about fifteen hundred feet off the road, and it is about the same distance, runs at right angles, just south of the plant, doesn't it?

A. No, I would say the plant is closer. If you are referring to Paley Avenue, the plant is closer to Paley Avenue.

Q. And there are houses on Paley Avenue and Midland Avenue along the front of the plant and the rendering plant is within a mile of the Coalburg yards, isn't it?

A. Yes. I would say a mile.

Q. There is an actual element of nuisance to the community about the rendering plant, isn't there?

A. Well, I suppose from time to time it does smell a little.

Q. Now, what were the tax levies, the total tax levies in the Township for 1942?

A. 1942.

Q. Yes. We will start with 1940.

A. You want the taxes, not the amount of money spent?

Q. I want the total amount of money raised by taxes. I want the total tax levy of the Township.

A. $156,750.47.

Q. For 1940?

A. Yes, sir.

Q. How much?

A. $156,750.47.

Q. Can you give me the total municipal revenue for all purposes including the amount raised for state and county taxes?

A. That is the amount. That is the total amount.

[fol. 309] Q. That is all the taxes raised in the Township that year?

Mr. Chandless: Taxes, but not other revenue.

Q. As reported to the county board of taxation.

A. Yes, sir.

Q. What is it for 1941?

A. $154,880.11.

Q. 1942?

A. $162,028.42.

Q. And for 1943?

A. That is the book I have not got with me.

Q. And 1944?

A. I haven't got 1943 and 1944.

Q. All right. When you say that that isn't all of the revenue, you mean that there is additional amounts received from fees and permits and licenses, is that right?

A. That is the total amount received in taxes.

Q. The figures that you have given us, did you receive any money from any other source?

A. No.

Q. That includes the fees and permits and licenses?

A. What?

Q. It doesn't?

A. That was the total amount that was to be needed for due taxes. These are the ones receivable.

Q. What additional amount is levied for other purposes, purposes in addition to these figures you have given us like the sub-total of miscellaneous revenues?

A. In 1941, $27,860.59.

Q. Wait a minute. The other item?

A. Subtotal of budget revenues, except new taxes, 1943, $88,311.80.

Q. Do they include the fees and permits and licenses?

A. Yes, they include the fees and permits and licenses.

Q. And what else do they include?

A. That is the whole budget.

[fol. 310] Mr. Chandless: Additional to that you have sub-total budget revenues except new taxes w ich comprises all these various items of finance, interests and costs and they total these items there, indicating to this paper.

Q. That includes receipts from deliquent taxes?

Mr. Chandless: That is it.

Mr. Minard: It would appear you are getting this amount.

(Discussion off the record.)

Q. Now, in riding around the community I notice at regular intervals there are deep ditches. What are they for?

A. In what part of the town?

Q. Around Midland Avenue and Paley Avenue until you get up to about Rochelle Parkway on the high ground. These ditches are all over, in back of the house lots and so on. Do you know what they are for?

A. They are for drainage purposes.

Q. Are they maintained by the property owners or by the municipality?

A. They are maintained by the county mosquito commission.

Q. Do they drain openly away or you have a sewer?

A. They drain into Saddle River, most of them.

Q. Do you know the extent of those ditches the length of them, in the Township of Saddle River?

A. Offhand I could not tell you.

Q. Do you know why this license ordinance was passed?

Mr. Chandless: I object.

[fol. 311] A. No, I don't know.

Q. Do you have any coal yards in Saddle River Township?

A. We have two.

Q. Is there any ordinance licensing them?

A. Not that I know of.

Q. Now, you spoke about the county board taking the assessment of coal off the tax list. Do you know why they did that?

A. Well, offhand I imagine on account of it being considered a warehouse, not taxable.

Q. You know that the Supreme Court and the Court of Errors and Appeals decided that that tax was unlawful?

A. That is why the county must have done so.

Q. You knew that fact?

A. I did.

Q. Now, you have spoken about certain amounts received from fees and permits. What kind of fees and permits are they?

A. Well, there are four for saloons, saloon licenses, plumbers' permits, fees and permits, builders' permits, peddlers' licenses and other various licenses.

Q. Licenses and a separate amount?

A. Yes, sir.

Q. Then that $2,626.90 for fees and permits is not licenses, it it?

A. No, it is not a license.

Q. Those are building permits and lots of other permits of that kind?

A. Yes.

Q. Now, the licenses include what kind of businesses?

A. They include saloons.

Q. Well, I think we can save a little time. I show you a list, an ordinance marked Exhibit P-13, it includes all those that are on that list, doesn't it?

A. I imagine so.

Q. And the saloon licenses are not in that ordinance?

A. No.

Q. It includes the saloon licenses?

A. As a license fee?

[fol. 312] Q. Yes.

A. Our ordinance calls for a license fee for the saloons.

Q. But the $4,374 for license fees include those on Exhibit marked P-13 and the saloons?

A. Yes, sir.

Q. And is there anything else?

A. That is all I know of.

Q. Are there any other licenses except this Coalburg license, that fixes the fee on the basis of square foot area?

A. No.

Q. Why was that method of license fee adopted?

Mr. Chandless: I object. He is not competent for that.

A. You will have to ask the Township Committee. They were the ones that passed the ordinance. I am not in the power to pass that. I am acting clerk.

Q. Do you know why that was adopted?

A. I could not tell you.

Q. Wast here any statement made at the time of the introduction of the ordinance that would explain that?

A. Not that I know of, offhand.

Q. Was there any statement made at the time of the Township Committee?

A. Well, I wasn't clerk at that time when it was passed through.

Q. Can you answer my question?

Mr. Chandless: I object. The ordinance speaks for itself.

A. Not to my knowledge.

Mr. Chandless: He is only a clerk.

Q. All right. Do you know anything about the ground water levels in the township?

A. A little.

[fol. 313] Q. All right. Now, then, what is the static ground water level in the equifer under the township?

A. I could not answer that.

Mr. Chandless: I object.

Q. Coming along the road, I saw where somebody dug out something in the field and the hole filled up with water. Is that the natural condition of the ground in that community?

A. Where?

Q. Along Paley Avenue, on the south side, a short distance east of Midland Avenue.

A. Well, that particular spot, they didn't dig no sod out.

Q. They dug out something eight inches deep and it filled up with water?

A. That particular spot they pulled out some stumps, stumps or trees out.

Q. This is a square space, cut out with a spade, just as if they were cutting out some sod?

A. I could not answer that question. I didn't see it.

Q. From your knowledge of the ground water condition, is that a condition that exists generally in that community, ground water within a few inches of the surface of the ground?

A. I know that section has ditches there and drains water off. If somebody digs a hole there and the following day it rains, the following day there will be water. Eventually it will evaporate.

Q. I am talking about the natural condition of the ground.

Mr. Chandless: I might say, to save time, the engineer is here. He can give you those facts.

Mr. Minard: O. K.

Q. How much vacant land does the township own or have title to for tax default or otherwise?

[fol. 314] A. Off hand I could not tell you. I will have to look up the record.

Q. Is there a considerable part of the township that the township has taken over for tax default?

A. No, there ain't so much.

Cross-examination.

By Mr. Bain:

Q. Let me ask you this, you mention the license for rendering plants as being $500 under the ordinance of March

23, 1934, and reduce to $350 under the ordinance of January 10, 1941. As a matter of fact, the license for rendering plants under the ordinance of March in 1934 was $150, wasn't it?

A. Yes, sir.

Q. And that was reduced by the ordinance in January of 1941 to $100?

A. Yes, sir. I arrived at $500 combined rendering plant and slaughter house.

Q. You included slaughter houses?

A. Yes.

Q. There is a separate license for slaughter houses, under the ordinance of 1934, and it was $350 and was reduced by the ordinance of January, 1941, to $250?

A. Yes.

Mr. Chandless: He means the Saddle River Township has a license for both.

Q. But the licenses for slaughter houses and rendering plants is separate and distinct. In other words, if one concern does rendering and a slaughtering business they pay two separate licenses, is that right?

A. That is correct.

Q. The last taxes that were paid on the coal assessed at the Coalburg plant were for 1939, weren't they?

A. Yes, 1939.

Q. And the township assessed the coal in 1940?

A. Yes.

[fol. 315] Q. And in 1941?

A. In 1942.

Q. And 1943 and 1944?

A. No. That is wiped off the books.

Q. They were taken over in 1943, after the township had included them along — its assessments returned to the county board on the tax duplicates and after the taxes on the coal had been included in the tax levy and appeals taken to the county board?

A. They were taken off by the tax assessors, as I understand it, through the orders of the county board of assessors.

Q. After the taxes were levied on the coal for 1943?

A. That I could not answer.

Q. I can tell you that that is the fact.

A. The assessors levied—I didn't know.

Q. They were on the assessment roll and the tax bill was sent out on them and the appeal was taken to the Bergen County Board of Taxation and they ordered them cancelled. That is what happened, wasn't it?

A. I am not in a position to answer that. It is the board of assessors that took it off.

Q. Do the assessments on the coal stored at Coalburg for 1940 and 1941 and 1942 still appear on the assessment roll?

A. Yes, up to 1942.

Q. Don't you know they were ordered cancelled by the State Board of Tax Appeals?

A. Those, not to my knowledge.

Q. I can tell you this was and I think your counsel can tell you they were.

Mr. Chandless: What difference does it make?

Mr. Bain: That is the fact.

Mr. Chandless: They were on the books, they were there. He doesn't take them off.

Mr. Bain: It is admitted that the State Board of Tax [fol. 316] Appeals cancelled those taxes for 1941 and 1942? Isn't it a fact, otherwise I can prove it.

Mr. Chandless: The books show, which you know in 1942 and 1941 and 1940, they were on the books; whether you get some judgment to take them off or not. He doesn't pretend to know that.

Mr. Bain: Then, I would like to know whether the assessments for 1940, 1941 and 1942 have been cancelled pursuant to the judgment of the State Board of Tax Appeals.

Mr. Chandless: You obtained the judgment from the county board?

Mr. Bain: In 1943 the county board sustained the assessments in 1941 and 1942 and the appeals were taken to the state board and then cancelled the assessments.

Mr. Chandless: What is your point?

Mr. Bain: I want to know, as the record stands now, according to the testimony of this witness, whether the assessments on the coal for 1940 and 1941 and 1942 are still on and appear on the books?

Mr. Chandless: Now, it is my impression that you obtained an order that relieves you from paying that assessment and he testified they weren't paid. It is my impres-

sion you got such an order, and whether you did or not, I think you did, and I will say that it is not material in this case.

Mr. Bain: The judgment of the State Board of Tax Appeals cancelled the assessment. I want to know whether they have been cancelled pursuant to that judgment.

[fol. 317] Mr. Chandless: Struck off the book?

Mr. Bain: Yes.

Mr. Chandless: They were not.

Mr. Bain: Or whether they still are being carried on the books of the township as uncollected revenue?

Mr. Chandless: If you have an order from the county or state board, they don't mark anything off the books. They file that order and then the auditor deducts that from uncollected taxes.

Mr. Bain: Am I to understand that there is still and appears of record a tax against the Pennsylvania Coal Company on that coal for 1940 and 1941 and 1942?

Mr. Chandless: It appears on the books. There may be filed with the tax collector a judgment of competent tribunal which relieves you of the obligation to pay it. I think there was such a judgment.

Mr. Bain: It is not relieving anybody from the burden of paying. It is a cancelation of assessment. The county board stated in 1943 that the coal was exempted from taxation.

Mr. Chandless: Your point is that the tax collector marked on the books "cancelled"?

Mr. Bain: Yes.

Mr. Chandless: It doesn't make any difference.

Mr. Bain: And it stands there as an uncollected revenue?

Mr. Chandless: It doesn't stand that way. All judgments are deducted from uncollected taxes. So, that you get a net balance of uncollected taxes. If you applied [fol. 318] for a tax search, those judgments are taken into consideration. So, undoubtedly, if you made a tax search it would show there was a lien reversed by the state or county board or the Supreme Court, as the case may be.

Mr. Bain: I think I ought to say——

Mr. Chandless: I don't think it makes any difference in this case here. I am not quibbling here. It was there and nobody changed those books.

Mr. Bain: I would like to know, I would like to know whether I must mandamus the township to cancel those taxes on those books.

Mr. Chandless: I can relieve you on that score. You don't have to worry about it the least bit. From the auditor's point of view they do not allow tax collectors to write in there "Cancelled." That would open the door for anything to happen. He must support that by a certified copy of the judgment, whether or not he made any pencil reference on that to the effect it was offset by the cost, I don't know.

Mr. Bain: Then, I understand you to say that the taxes on the coal in 1940, 1941 and 1942 and 1943 and 1944, one or more of those years, are still being carried on the township books as an uncollected tax, uncollected taxes.

Mr. Chandless: I say just the opposite.

Mr. Bain: They are being carried as uncollected taxes.

Mr. Chandless: I say that that is not so.

Mr. Bain: Which is the fact, they are or they are not?

[fol. 319] Mr. Chandless: Whenever any judgment comes through and no further appeal is taken, the auditor then deducts them from his uncollected taxes, his uncollected tax account.

Mr. Bain: And you tell me that that has been done?

Mr. Chandless: I presume the auditor does it. He is a competent auditor. I presume he does it. I take it that the officials of Saddle River Township, when they are supposed to do something, do do it.

Mr. Bain: The taxes on the whole, at the Coalburg plant for 1941, 1942 and 1943 and 1944 amounted to approximately six per cent of the total taxes raised in the township, didn't they?

The Witness: Offhand, I couldn't tell you that.

Q. And the tax rate, however, for the years 1939, 1940, 1941, 1942, 1943 and 1944 didn't vary by more than about forty-five cents a hundred?

A. I will have to look at the list. This tax list. What year was that?

Q. From 1939 to 1944. The maximum increase in the tax rate for any year was not in excess of forty-five cents a hundred in value?

A. Yes, forty-five cents is right.

Q. Do you know what the tax rate would have been if you

carried the taxes on the coal for 1940 to 1943, as uncollectible revenue?

A. I think that is a job for the auditor to figure out.

Mr. Chandless: I object.

Q. Now, the licensing ordinance. That is the ordinance for the licensing of warehouses or the business of carrying [fol. 320] on storage of goods for hire, that was passed in January of 1943, wasn't it?

A. Yes, sir.

Q. And the taxes for 1944 were levied after that ordinance was passed, isn't that correct?

A. That is right.

Q. And they were included in the assessments for 1944 and assessment on the coal stored in the Coalburg plant, wasn't it?

Mr. Chandless: I object.

A. Offhand I could not tell you. The auditor does that work.

Q. I thought you told me the assessments for 1944 were ordered off?

A. They are not on the book, none for 1943 and 1944.

Q. Do you know whether there was an assessment on the tax duplicate as reported by the county board to the township?

A. No.

Q. What do you mean that the 1944 assessment was ordered off by the county board?

A. It is not entered in the book. There is no assessment against the Coalburg for any personal tax on the coal for 1943 or 1944.

Q. You mean there is no such assessment now or there was such an assessment and taken off by the County board?

A. That I could not answer. That is for the auditors to do that. That is a job for them.

Q. Do you know whether there was an assessment on the coal for the year 1943?

A. The books don't show it.

Q. Do the books show there was an assessment and cancelled by a judgment of the county board?

A. Offhand I could not answer that.

[fol. 321] Q. You haven't got the books here?

A. I haven't got 1943 with me.

Q. Why didn't you bring them?

A. There was no assessment against the firm and I figured it wasn't needed.

Q. No assessment against the coal?

A. Not personal.

Q. I ask you to leave your testimony subject to correction on that because there was an assessment on the coal in 1943. The township sent out a tax bill on the coal in 1943 and that assessment was appealed to the county board of taxation and the county board of taxation, by its judgment, held the coal exempt from tax. I don't want you to get in wrong with your testimony.

Mr. Chandless: We concede, as far as those years go, they were held open until after the decision of the Court of Errors and Appeals and then subsequent thereto, if the 1943 assessment had been levied by the time the decision came along, then, it was there, and subsequently cancelled. This man doesn't pretend to be competent in those mechanics.

Mr. Bain: He did testify distinctly on his direct-examination that the coal at the Coalburg plant——

Mr. Chandless: If it was ordered by the county board, and you tell me that is so, why confuse the man?

Mr. Bain: I am trying to find out whether for the years 1943 and 1944 this witness knows whether there was an assessment actually made which was cancelled by the county board.

[fol. 322] The Witness: I say in 1943 the county board ordered the assessment off the books. There is no assessment in 1944.

Mr. Chandless: He wasn't there. You were.

Mr. Bain: All right. As long as we have the record straight, all right.

Q. The assessment on the coal, that is the assessed valuation on the coal for personal taxes, from 1940, from 1933 to 1942, both inclusive, was $193,600?

A. That is right.

Q. Do you know what the assessment was for 1943?

A. Offhand I couldn't tell you unless I had the book here.

Q. That is all.

By Mr. Chandless:

Q. Just so as to clear up one thing, there was some mention made by Mr. Minard with respect to the rendering plant. I understand what you refer to is the rendering plant, that it holds three business licenses, one from the Township Committee and two from the Board of Health.

Mr. Bain: Not by the township. Both of the ordinances I had before me were from the Board of Health.

Mr. Chandless: You put it in evidence yourself.

Mr. Bain: No, I did not.

Mr. Chandless: Sure, you did. You put two of them in.

Mr. Bain: I object to that. There is no ordinance I have been able to find nor has he produced it for a separate licensing by the Township Committee for either slaughter houses or rendering plants.

[fol. 323] Mr. Chandless: I think you did put it in there. So, there may be no question about it, I call your attention to Exhibit P-13 and ask you if it is not true whether the license fee for rendering plants, the license to be obtained from the Township Committee, is $500, is that correct?

The Witness: That is right.

Mr. Chandless: And it was changed by an amendment to the ordinance reducing it to $150.

Mr. Minard: That is exhibit marked P-14?

Mr. Chandless: Yes.

And that is the ordinance from the Township Committee?

The Witness: Yes, sir.

Mr. Chandless: And that means that originally they paid $500 to the Township Committee and then they paid another $500 to the Board of Health for two licenses from the Board of Health?

The Witness: That is right.

Mr. Chandless: And now they paid a $150 to the Township Committee and $350 to the Board of Health for two licenses from that board?

The Witness: That is right.

By Mr. Bain:

Q. Now, Mr. Chandless has just shown you the published notice of the ordinance which was passed in March of 1934, hasn't he?

A. That is not the ordinance. That is the published notice of it.

Mr. Chandless: You put it in evidence.

Mr. Minard: It is conceded that that is the form in which it was passed.

[fol. 324] Q. Did the Board of Health in 1934 pass an ordinance for the licensing of slaughter houses and rendering plants and the Township Committee in the same month and at the same time also pass them?

A. Yes.

Q. So you had two separate licenses, one by the Township Committee and one by the Board of Health, covering the same business?

Mr. Chandless. Yes.

Mr. Bain: I want to make sure of that.

Mr. Chandless: We have it on the record so that everybody understands it.

Q. That is all.

Mr. Chandless: I have one more question of the previous witness. We want to offer in evidence the zoning map as distinguished from the whole ordinance.

Mr. Bain: When was that adopted?

Mr. Chandless: That was the one you questioned the witness about with respect to that, or Mr. Minard did. That is the zoning map of the Township of Saddle River, is that correct?

The Witness: Yes, sir.

Mr. Chandless: I will offer it in evidence.

(Exhibit D-2).

Frank E. Harley, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Chandless:

Q. Mr. Harley, you are the township engineer of the Township of Saddle River, is that right?

A. Yes, sir.

[fol. 325] Q. At my request, Mr. Harley, did you compute the area on Exhibit P-1?

A. Yes, that is correct.

Q. Did you compute the square foot area of the storage piles that appear on that exhibit?

A. Yes, I did.

Mr. Minard: Let us understand what is meant by storage piles, referring to that map. You didn't compute the area of the assessment block 106-D?

The Witness: I computed the area of the actual ground occupied by the coal as it was stored.

Mr. Minard: You mean the coal floors?

The Witness: The coal floors. No, not the coal floors, just the actual area within the circles shown as between what is noted in the map as floor D. There are two circles here, 120 foot radius. That is within the floors, exclusive of the areas outside of the circles.

Q. The areas of the assessment, you didn't compute that?

A. No.

Q. The floor, as floor space?

A. Yes, occupied by the coal.

Q. And those are floors marked "D," rather, the circles in about "C" and "D" and "B" and north, which is between here. Those broken lines, circles, is that what you include?

A. Yes, sir, and with approximate calculations.

By Mr. Chandless:

Q. What did you find to be the ground area of each one of these circles which indicate coal piles?

A. Roughly, there was around forty-five thousand.

[fol. 326] Q. Forty-five thousand of what?

A. Square feet of ground area occupied by the coal piles.

Q. How many piles altogether appear on Exhibit P-1?

A. There are fourteen.

Q. That gives you a total area for the storage of coal of how much?

A. Of about 630,000 square feet.

Q. And——

Mr. Bain: Pardon me. Those broken line circles north of the track are larger than the circles south of the track?

The Witness: Yes. I made a little allowance, I said approximate areas. I figured those approximately.

Mr. Bain: Then, you treated them as having the same areas as the coal floors?

The Witness: In other words, they are perhaps a little larger on account of the method of piling and it would be about or average up.

By Mr. Chandless:

Q. Now, that would be the total square footage of storage space under Exhibit P-1 in the event that the plant was filled to capacity, is that correct?

A. Yes, sir, the actual area used to store coal.

Q. And naturally if the plant was only up to fifty per cent of capacity the ground area would be proportionately reduced, isn't that correct?

A. Not necessarily. If those piles were fifty per cent, the ground area would be the same amount. If they used half the number of piles, yes.

Q. In other words, they had seven tons of coal and they put it into seven piles?

A. Yes, then it would be half of the area.

[fol. 327] Q. Instead of the fourteen?

A. Yes, sir, half of the area.

Q. Well, now, did you compute what the cost per ton, what the cost per ton of coal would be under the license ordinance involved in this case?

Mr. Minard: Based on his computation of 630,000 square feet.

The Witness: That is right, also on several other basis.

Q. Now, you also computed the area on the basis of 1,198,500 square feet as appearing on Exhibit marked P-2, isn't that correct?

Mr. Minard: P-1, isn't it?

The witness: No. P-2.

A. Yes, it is.

Q. And that square foot area has reference to the square feet of land used for storage plant purposes, is that right?

A. That is what the exhibit states.

Q. That is what the exhibit states?

A. Yes, sir.

Q. You also computed it on the basis of a total of, the amount of square feet used for storage space or storage plant and also railroad tracks, didn't you?

A. That is right.

Mr. Minard: How many square feet?

Q. That is the addition of what two items on Exhibit P-2?

Mr. Minard: How many square feet?

A. One question at a time. The fourth column is the occupancy of the railroad tracks, 4,000, no, 462,300 square feet, and storage plant 1,198,500 square feet. The sum [fol. 328] of these two gives me 1,660,850 square feet.

Q. Now, Mr. Harley, will you tell us what the rate per ton of coal would be?

Mr. Minard: Let's get the figures first. What is the license fee he uses?

A. I am using a license fee of——

Mr. Minard: What does it amount to on the 600,000 square feet?

Q. You computed it that way?

Mr. Minard: He had to have that figure in order to compute the rate per ton.

Mr. Chandless: Wait until we show you.

Q. (Last question repeated by stenographer as follows: Now, Mr. Harley, will you tell us what the rate per ton of coal would be if the plant had a capacity of 400,000 tons?)

Mr. Minard: That is objected to.

Q. Based on the three computations of area which you have just referred to.

Mr. Minard: I object on the ground that the witness hasn't stated any computation of the amount of coal that could be stored on those areas.

Q. You answer the question. Have you got a set of figures?

A. Yes, I have.

Q. I ask you to compute it on the basis of 400,000 tons in storage.

A. That is correct.

Q. I asked you to compute it on the basis of 360,000 in storage?

A. Yes.

[fol. 329] Q. And I asked you to base it on 138,109 tons in storage as appears by Exhibit P-10.

A. Yes.

Q. Have you prepared those computations?

A. I have, sir.

Q. And that is the computation indicating on this?

A. Yes, it is.

Mr. Chandless: I offer it in evidence. I have given you a copy of it.

Mr. Minard: I think we will read it in the record. Don't mark it.

Q. Will you give us your computations?

A. Yes. We have the 400,000 tons using a storage space of 630,000 square feet on the basis of three-quarters cent per square foot area occupied, the amount in the ordinance would give us .0120 cents.

Q. Per ton?

A. Per net ton.

Q. All right. Proceed.

A. On th basis of the occupancy, the storage plant given in this Exhibit P-2 is $1,198,500. It is two and a quarter cents.

Q. Capacity?

A. 400,000 tons.

Mr. Minard: That is on Exhibit 2.

The Witness: Supposing I state them.

Q. Yes.

A. On the basis of 400,000 tons in storage, the storage space 1,660,800 square feet being the total amount of area shown on Exhibit P-2 as storage plant and occupancy and railroad tracks and gives us a rate of .0267 cents per ton. Proceeding on the basis of 350,000 tons in storage, 630,000 square feet gives us .0155 cents per net ton. On the basis of 1,198,500 square feet, it gives the rate of .0257 and 350,000 tons in storage gives us 1,660,850 square feet, rate .0303 cents per ton. On the basis of the amount of storage given in this one case of 138,108——

[fol. 330] Q. Referring to what?

A. To Exhibit P-10. I gave you the three figures on the same basis, using in each case 630,000 square feet, and that would be .0342 cents, on the basis of the same amount of coal, 1,198,500 square feet at .0651 cents per net ton. The same tons in storage 132,000—1,660,850 square feet, would be .0802 cents per ton.

Q. Now, Mr. Harley, did you compute what would be the taxes on coal at Coalberg if the same was taxed as personal property?

Mr. Minard: I object to that on the ground that this witness would have to fix the value and he is not qualified to do so.

Mr. Chandless: I am going to proceed with it. The question is did he compute it and his answer is yes.

Q. Now, did you compute it on the basis of the prices set out in Exhibit D-1?

A. Well, I would like to see what Exhibit D-1 is.

Q. That is the card.

A. Yes, that is Pattison & Bowns. That is Pattison & Bowns schedule. Yes, I used these prices in here.

Q. And what tax rate did you use?

A. I used the tax rate of four cents per ton which I——

Q. No. By four cents a ton you mean a federal tax?

A. Yes.

Q. What local tax rate did you use in arriving at a computation, what the tax rate would be on this coal as personal property?

Mr. Minard: For what year?

A. I used an average rate of $5.85 per hundred dollars.

Q. That appeared to you to be the average tax rate valuation of Saddle River Township over a period of what?

A. Four or five years.

[fol. 331] Q. Will you give us what you ascertained would be the personal property tax per ton on grate, egg, stove and chestnut coal if taxed on that basis?

Mr. Minard: The question is objected to on the ground that it is not within the qualifications of this witness. Do I understand that your object is to show that the object of this ordinance was to obtain the equivalent in taxes or what had been set aside by the court, is that the object?

Mr. Chandless: My object is to show that this license fee, which you claim to be unreasonable, would impose a tax on this coal, only a very small proportion of what they would pay for personal property taxes, or anybody else would pay if they didn't use the device of a warehouse. My object is to show that this ordinance, which is for revenue purposes, would raise in revenue and impose upon the prosecutors in this case a burden far less than the burden which they themselves carried for years.

Mr. Minard: Are you willing to answer my question yes or no?

Mr. Chandless: You asked me what I was trying to do. You know.

Mr. Minard: Will you answer my question? Why are you unwilling to answer my question yes or no, one way or the other?

Mr. Chandless: I am submitting to the Court what I consider to be conclusive evidence that this ordinance is very reasonable.

Mr. Minard: You are not willing to answer my question [fol. 332] that this is a tax in lieu of the tax which the court set aside. All right, O. K. Give it up.

Mr. Chandless: The ordinance says on its face it is a revenue ordinance.

Mr. Minard: We grant that. I would like to know whether the witness is basing his answer on a tonnage of 400,000 tons, what tonnage he is basing it on.

Mr. Chandless: It doesn't make any difference.

Mr. Minard: In other words, to get the tax rate you have to, in order to get a valuation, you have to know the number of tons and price per ton. The question isn't proper unless we have some information as to the tonnage on which the witness based his answer and the price per ton.

Mr. Chandless: It wouldn't make any difference. All this witness is doing is multiplying it by five. Eighty-five.

Mr. Minard: Is that all he is doing?

Mr. Chandless: Yes.

Mr. Minard: Then, I object to the statement that his answer would be the amount any tax on the coal.

Mr. Chandless: That is what the tax would be.

Mr. Minard: No. It is a mere arithmetical calculation by the witness.

Mr. Chandless: The question was, I will repeat it.

Q. What would the tax be on egg, grate, stove and chestnut coal at Coalburg in Saddle River Township at the average tax rate of 5.85 on the basis of a ton?

[fol. 333] Mr. Minard: I make the same objection as before to the former question.

Q. Answer the question.

A. The price $9.94 a net ton at the rate specified 5.85—would be 58 cents per ton for grate, egg, stove and chestnut coal.

Q. In other words, if this coal was subject to personal property taxes at a rate of 5.85, that is what each ton of grate, egg, stove and chestnut coal would be?

Mr. Minard: I object. It is not within the qualifications of the witness. I think you must concede that he cannot state what the taxes would be.

Q. Answer the question.

Mr. Chandless: He answered or testified that that is the average tax rate. He testified that he used prices set for it in Pattison & Bowns price list, which has already been put in evidence.

Mr. Minard: Then he has multiplied a certain tonnage.

Mr. Chandless: Tonnage has nothing to do with it. It has nothing to do.

Mr. Minard: How does he get the tax?

Mr. Chandless: He gets the price per ton and applies the rate to it.

Mr. Minard: This is supposed to be a statement of taxes per ton.

The Witness: Yes, sir.

Mr. Minard: In order, in other words, if they had a hundred thousand tons, what would the tax rate be?

[fol. 334] The Witness: A hundred times 58 cents.

Mr. Minard: Based upon the application of a tax rate to the price of a ton of coal stated in a circular sent out to coal dealers?

The Witness: That is right.

Mr. Chandless: Based on the average rate as paid by the prosecutors in this case over a period of a great many years.

Mr. Minard: I object to that statement because there is no proof of it.

Mr. Chandless: I submit that the record shows that Mr. Belli testified that the taxes on this coal from 1928 on——

Mr. Minard: If you take the taxes actually levied for any particular year, that is something else. That is not what you are doing.

Mr. Chandless: Will you give us the figures?

The Witness: Pea coal based at $8.40 a ton would be 49 cents a ton. Buckwheat $6.80 a ton would be 40 cents a ton. Rice at $5.98 a ton at Coalburg would result in 35 cents. Barley $4.90 a ton would result in a tax rate of 29 cents a net ton at Coalburg.

Q. Now, the values you place on that coal, according to those figures which you have just given us were arrived at how?

A. Taking the circular which is marked D-1, the Pittston Coal Company, November 24, 1943, taken at their published price list, the discount plus the federal tax and plus the freight rate from the mines to Coalburg.

Q. Now, at my request, did you check some of the holders of liquor licenses in Saddle River Township and compute [fol. 335] the area used for business purposes by those licensees?

A. I did.

Q. Will you tell us what ones you checked and what square footage you found used for business purposes?

Mr. Minard: I object to that as being irrelevant, unless he shows that the ordinance licenses them by the square foot and he cannot show that. I object unless he shows that the license was fixed according to a square footage basis.

Q. Answer the question.

A. I checked four taverns in Saddle River Township.

Q. Did they appear to be average taverns?

Mr. Minard: What is an average tavern? Tell us what that is.

A. I checked four and I came within a few square feet. The Shack on Saddle River Road has 778 square feet. Paley's Tavern on Paley Avenue and Saddle River Road had an area of 840 feet. De Rosa's tavern was rather smaller. That only had an area of 567 square feet. That is President and Fifth Street. Then, there is Ed's Tavern

on Market Street which had an area of 700 square feet. That would give us an average area used for tavern purposes between 700 and 800 square feet, a rough calculation of 800 square feet.

Q. Did you then compute the square foot charge for licensing purposes under the liquor license ordinance?

A. I can do it, on the basis of 800 square feet, which we will assume as an average.

Q. The license fee being $250?

A. That is correct.

[fol. 336] Q. What do you find is the rate per square foot?

A. Approximately 32 cents per square foot.

Q. Actually it will be about 31⅓ cents per square foot?

A. Yes, that is correct.

Q. Now, did you check the rendering plant that is licensed by the Township Committee and under the two licenses of the Board of Health?

A. I did.

Q. How many square feet did you find used for their business purposes?

A. The total of the square foot area 6,544 square feet.

Mr. Minard: Repeat that.

The Witness: 6,544 square feet.

Q. Did you compute the charge per square foot using the license fee of $500?

A. Yes. On the basis of $500 license fee for both buildings it would be about 7.6 cents per square foot.

Q. Did you make a computation as to carnivals, carnival license fees as referred to in Exhibit marked P-13?

A. May I see that?

Q. Yes.

A. Yes. There are two types of carnivals. One is an annual carnival.

Q. Did you compute that?

A. Yes. That would be an average, the annual carnival from what I could learn from the Township Committee, it was put in for the purpose of having a kind of a perpetual outdoor show with little merry-go-rounds. It is mostly for children. That fee was $500.

Q. What was the area involved there?

A. 100 by 100 contemplating using, that would be on a basis of 5 cents a square foot. Now, on the outdoor carnival for one week or less there was a fee of $100.

Q. Now, did you compute that on an annual basis, the square foot rate?

[fol. 337] Mr. Minard: Which one?

A. There are two types. First there is an annual basis for a small carnival of more or less permanent nature.

Mr. Minard: Is that of any particular size?

The Witness: That is approximately 100 by 100 that would be required.

Mr. Minard: Is there a place set aside for that type of thing in the township?

The Witness: An application was made to place this little children's carnival on a site about 100 by 100.

Q. By carnival you mean a merry-go-round?

A. Yes, and amusements for children and the fee for that was to be $500 per year.

Q. Then, the weekly one, did you compute that?

A. From my observation of that type of carnival, they usually get them into a space of 200 by 200 which is slightly less than an acre.

Q. What rate would be the fee per week?

A. A quarter of a cent a foot.

Q. And a year?

A. It would be fifty times a quarter of a cent, or 13 cents a square foot per year.

Mr. Minard: 13 cents a square foot?

The Witness: Per year.

Mr. Minard: A year is $5,200?

The Witness: Yes, sir.

Mr. Chandless: I am just about finished.

The Witness: That was about all.

Q. You examined the locality known as Coalburg?

A. Yes.

[fol. 338] Q. You did?

A. Yes.

Q. Are you familiar with it?

A. Yes, sir.

Q. What have you got to say about the level of the land there as compared with the surrounding neighborhood?

A. I would rather put that in a different way. The tracks through this section are about five to six feet higher than the level of the land surrounding.

Mr. Minard: You mean the railroad tracks?

The Witness: Yes, five foot fill through there.

Q. Through the whole neighborhood?

A. Through the whole neighborhood.

Q. That is to prevent what?

A. To keep their railroad straight.

Mr. Minard: You don't mean in the plant?

The Witness: All the way through the section.

Mr. Minard: In the plant property?

The Witness: Yes, sir.

Mr. Minard: You are not talking about the main line of the railroad?

The Witness: They are both the same.

Mr. Minard: The tracks are five or six feet above the floor?

The Witness: Yes, sir. These tracks here shown on Exhibit P-1, these tracks are practically on the same level as the Susquehanna Railroad tracks. These down here are on a lower level, going over Saddle River Road you have an approach on each side. You have to come up six feet [fol. 339] to clear it or go over the tracks. In other words, the tracks are six feet higher than all your surrounding property.

Q. Referring to Exhibit P-1, I call your attention to a certain line that leads out of the property and ask you what that is, these certain lines, what are they?

A. They show generally that the topography of the adjoining neighborhood——

Q. What are they?

A. Well, you have a street over here.

Q. Any approximation indicated on that map?

A. Yes. There is a street here, Garden Street, and there is a pretty substantial size of brook underpassing Garden Street and Saddle River Road.

Q. And that leads from where to where?

A. It drains the area occupied by Coalburg and also drains the area north of Coalburg. The residence area north of Coalburg and the Saddle River Township.

Q. That indicates what to you, the Coalburg property has what relationship to the area between it and the Saddle River, is it higher or lower?

A. Generally, in order to have that brook drain into Saddle River it has to be a little higher.

Q. And brooks do not run uphill?

A. No.

Q. Therefore, you know the Coalburg property is higher than the neighborhood which surrounds the Saddle River?

A. Slightly.

Q. Enough so a natural brook runs off?

A. It is a natural brook; it is a brook.

Mr. Minard: Does that brook run through the Coalburg property?

The Witness: Yes. However, they have converted to suit their own purposes. You have a drainage area there to the south.

[fol. 340] Q. Now, I ask you, Mr. Harley, when the Township of Saddle River laid out the maps of this area——

A. We have the tax map which shows some development adjacent to Coalburg.

Q. That has been brought up to what date?

A. It has been brought up to date. In other words, they were taken from the tax map sheets in my office which are kept right up to date within a month or two.

Q. This is the present lay-out of the neighborhood, is that right?

A. Yes, the Coalburg property and the adjoining houses.

Mr. Chandless: I will offer them in evidence.

(Exhibit D-3.)

A. (Witness continues answering.) All these squares here indicate the houses there, all through here.

Mr. Minard: It shows a lot of streets not on the ground.

The Witness: It shows some, what we call paper streets, and also shows some physical streets.

Mr. Chandless: I will explain that to you.

Mr. Minard: This is not a development map.

The Witness: No. This is the tax assessment map.

Mr. Minard: That is, it shows the lots and blocks for the purpose of assessment.

The Witness: That is right.

Mr. Minard: Even where the blocks are not actually bounded by streets on the ground, by physical streets.

[fol. 341] The Witness: You will see wherever there are houses this tax map shows the houses in that vicinity.

Mr. Minard: And if it shows woods, no streets, what then?

The Witness: That is here.

Mr. Minard: It does show that situation?

The Witness: Yes, sir.

By Mr. Chandless:

Q. What does it mean when it shows a street on this map?

A. It means when you have a street on the map that has never been finished, I will say that it shows that developer went broke trying to develop it.

Q. Doesn't it indicate a map was filed, all filed maps must appear on assessing maps?

A. Yes, sir.

Q. And filed?

A. Yes.

Q. And the filed map is filed by the owner of the property indicating he proposes to develop his property in that particular form?

A. Yes.

Q. This layout here isn't devised by you as township engineer?

A. No. It is the layout devised by the owner of the property.

I might say that some of the paper streets and actual streets go back to long before I was born.

Q. One more question. Do you know whether or not they wash coal at the Coalburg plant?

A. There is every indication that they do for this reason. They have quite an extensive system of wooden troughs which drain into the ditches. I will be frank to say I have not actually witnessed them washing the coal, but they are there for the purpose. There is a system that can be used.

Mr. Minard: They all drain into filter beds?

[fol. 342] The Witness: No, they drain into the side ditches. I have noticed there isn't any great discoloration of the stream from your particles of coal.

Mr. Minard: It must be some filter then?

The Witness: The water isn't absolutely clear. It is a little turpid.

Cross-examination.

By Mr. Minard:

Q. Now, you have figured various areas as applicable under this ordinance. Do you know why the complainants in this case accuse these people of violating the ordinance by conducting a business on block 106-D, in the township?

A. No, I cannot. In other words, I notice you question the other witnesses to give an opinion. What I would say would be an opinion.

Q. Did you survey the plant prior to the enactment of the ordinance to get the area?

A. I took the data that I had which included the tax map data, aerial photographs and general information I had in my file and made up a composite map from my information.

Q. Did you report to the Township Committee any area subject of licensing?

A. I reported the area that I considered was used in connection with the storage of coal, which included tracks and so forth.

Q. Was that block 106-D?

A. Offhand, if you want me to refer to the tax map, I can answer that. Otherwise, I cannot.

Mr. Chandless: I object. The ordinance says that a license shall be taken for that area which is used for storage purposes. That would be dependent upon what you [fol. 343] say you want to use for storage purposes. If you want to use the area for seven piles, you make an application for that particular thing. This witness isn't competent to tell you how much you are going to use for storage purposes.

A. (Witness continues answering) I might tell you what you may use.

Mr. Chandless: He might tell you what he thinks you may use, but that wouldn't be binding upon the municipality as far as the complaint in this case goes. You know, Mr. Minard, that the reference to that particular lot is a matter of description, just the same as you might describe an assault and battery charge, say, having occurred at 240 Main Street. You wouldn't mean all over the property.

Mr. Minard: You don't punish assault and battery charges by three-quarters of a cent per square foot.

Q. Will you tell me how much area you reported to the Township Committee when you made the investigation prior to the enactment of this ordinance?

A. I think I have those records with me. I would not guarantee, though. I will look through and see. As I recall it, it was roughly about a million and a half square feet.

Q. I see, all right.

A. That I considered was used in the entire processing of storage of coal.

Q. Did you attempt to adopt the assessment as the place or premises where the business was conducted?

A. No.

[fol. 344] Mr. Chandless: I object. He had nothing to do with it. It was up to the Township Committee.

Mr. Minard: All right.

Q. Was that for the purpose of determining how much revenue the ordinance would bring?

A. I would not say so.

Mr. Chandless: I object.

Q. What was the purpose of it?

A. To find out what was the area of their operations. I am not the policy maker.

Q. We understand that. That is perfectly superfluous. You went there to measure a given area. Did you have instructions what area to include, what you were to get?

A. I was told to get in my opinion the area that was used for coal handling purposes.

Q. That was to be your opinion?

A. Yes, sir.

Q. Somebody else's opinion might have been different from that?

A. It might be. All these things are subject to differences of opinion.

Q. All right. You did not make a description of the property used for the plant purposes, did you?

A. No, I did not. Nor was there any occasion for me to do it.

Q. Well, that was one question I didn't ask you. You merely reported the number of square feet which in your opinion constituted the plant, is that right?

A. That is correct.

Q. You didn't give any description of the area by metes and bounds?

A. No, I did not.

Q. You understand, I suppose, that in various years different amounts of coal was stored there? You understand that?

[fol. 345] A. Yes, I remember I have seen practically every one of those piles piled up to the top.

Q. How long ago?

A. Well, I wouldn't want to say. I have traveled up and down the Susquehanna Railroad a number of years. In fact, I can remember when I was a very young boy and I was fascinated by the big piles of coal.

Q. You see, I cannot allow your statement go unless we fix the time for it.

Mr. Chandless: A lifetime.

Q. How long ago was it you saw all the coal piles filled?

A. I wouldn't be able to say.

Q. Was it ten years ago?

A. It might have been ten years ago or twenty years ago.

Mr. Chandless: I object.

Mr. Minard: All right.

Q. Now, then, you know that the amount of coal handled at Coalburg has diminshed over a great many years on account of competition of fuel oil?

A. I am not in the coal business.

Mr. Chandless: I object.

Q. Do you know that of your own knowledge that fuel oil has increased in use and coal has decreased in use?

Mr. Chandless: I object.

A. I am not in the coal business.

Q. Well, do you know that?

Mr. Chandless: How can he tell?

A. I can only tell you from my own experience. I now use oil instead of coal.

[fol. 346] Q. You know a great many other people have done the same thing?

A. Yes, sir.

Q. And during the past five years, how often have you been to the Coalburg plant?

A. Oh, I wouldn't know offhand, possibly, directly to the plant, possibly four or five times and I have passed it in that same period perhaps a hundred times.

Q. To what extent was it occupied the period I have mentioned during the past four or five years when you saw it?

Mr. Chandless: I object. He can't answer that. Do you want speculations or guesses?

Q. Can you answer my question?

A. I cannot. I haven't paid too much attention.

Q. Do you know of any time when there was 400,000 tons of coal there?

Mr. Chandless: I object. He has not testified there was.

Mr. Minard: He computed on that basis.

Mr. Chandless: You, in your pleadings said so.

Mr. Minard: No.

Q. Do you know of any time when there was 400,000 tons of coal there?

Mr. Chandless: He doesn't know.

A. I know there is a capacity of 400,000.

Q. Was there any time you have seen that during the last five or ten years, full to capacity?

A. As I say, I haven't paid too much attention to the amount of coal in there. I have no interest in that.

[fol. 347] Q. Do you know of any time when there was 400,000 tons of coal in there?

A. No, I don't.

Q. Do you know of any time when there was 350,000 tons of coal in there?

A. Well, I have seen, as I say, in the years gone by, I have seen that pretty well filled.

Q. When you say the last five years, do you know of any time when there was 350,000 tons of coal there?

A. I don't.

Q. Do you know of any time within the last five years when there was 138,000 tons of coal there?

A. By reading some of your exhibits and I presume they are correct. It is marked there.

Q. And that says that during a certain calendar year, namely 1941, 138,000 tons of coal was put in storage, throughout the year, but you don't know how much coal was there during any time during that year?

A. No.

Q. You computed on 138,000 tons of coal—didn't you compute on 1943 corresponding figures?

A. For one reason. I didn't consider those average years because of the coal strike and the trouble John Lewis caused.

Q. That is the reason?

A. Because it was subnormal years.

Q. Why didn't you use 1942?

A. For the same reason.

Q. You mean the same John L. Lewis coal strike in 1942?

A. The same general trouble in the coal industry.

Q. Upon what basis or information did you decide on the amount of coal put in throughout 1941 that constituted an average?

Mr. Chandless: I object.

Mr. Minard: Wait a minute. He said he used an average. [fol. 348] Mr. Chandless: Just a minute. I object on the ground that the witness' testimony on direct-examination was that pursuant to my instructions he made these computations on the basis of 400,000 tons and 138,900 tons. I take the responsibility of showing that those are material statements of quantities, 400,000 tons because in your pleadings, as I say, the capacity cited is 400,000 tons.

Mr. Minard: I have not said so.

Mr. Chandless: And 350,000 tons because your witnesses testified the capacity was that and 138,109 tons because in your exhibit you refer to that being the amount there.

Mr. Minard No, the exhibit doesn't show that that was there. Anyway, all right.

Mr. Chandless: This witness was not offered to show that these quantities were there.

Q. Did you use the 138,109 tons in 1942 as an average for computation purposes?

A. Simply for taking a certain year, on that basis, as on Mr. Chandless' request.

Q. You realize that that amount of coal wasn't in the storage plant at any one time?

A. There was a certain amount going through.

Q. Yes, there is a certain amount going through on the railroad, a year, but the amount going through a year wouldn't represent the amount of coal there is today.

A. Yes.

Q. Couldn't you answer that question?

A. Repeat your question.

Q. Because a certain quantity of coal passed through [fol. 349] Hackensack on the railroad during the twelve months of a given year, that wouldn't mean that there was that amount of coal in Hackensack on any one day, would it?

A. No.

Q. Did you undertake to determine, of your own volition, some fair basis of computation to determine the rate, the cost per ton of this license fee and so on which you gave us or did you simply do what Mr. Chandless told you?

A. At Mr. Chandless' request.

Q. He specified the area?

A. No, he didn't.

Q. Well, who did?

A. I did.

Q. Why did you select particular areas?

A. Because it was occupied by the operations.

Q. Which of these coal piles had coal in it when you looked at it?

A. There was more there than now.

Q. When did you look at it?

A. Oh, I would say possibly two years ago.

Q. You haven't seen it since?

A. Yes.

Q. When?

A. Last Sunday.

Q. How many coal piles last Sunday were occupied, how many of the coal floors were occupied?

Mr. Chandless: I object on the ground that this witness wasn't offered for the purpose of observation or testimony as to anything he observed. He, at my request, furnished certain computations based on your own exhibit. The thing you put in yourself. He computed that. I don't care what his opinion may be with relation to this plant, whether the fee is low or high. That is none of his concern, none of his business. We offered him for the purpose of, as an engineer, computing certain figures for us. That is all he is here for.

[fol. 350] Mr. Minard: If you are through padding the record, I will go ahead with my examination.

Q. How many coal piles were piled when you were there last Sunday on the coal floors?

A. Two on the railroad and in the rear some were piled up.

Q. Then, there were three piles?

A. I would say perhaps, I have forgotten how many in here. I know there was coal here and there.

Q. How high were the piles?

A. Well, I didn't make an estimate how high they were.

Q. You don't know how many or how much coal was in there?

A. It wasn't my intention to find out.

Q. You didn't want to know how much coal was actually there?

A. I had no reason to.

Q. Answer yes or no.

A. I had no occasion to measure up the coal.

Q. Well, you didn't know how much coal was there?

A. I saw no reason why.

Q. Did it make any difference to you how much coal was there?

A. No.

Q. All right. That is your answer. You could have given it a long time ago.

Q. Now, when you computed the cost per ton, of a license fee computed on the basis of certain areas, you included—

wait a minute—strike that out. When you used the track area of 462,350 square feet, you included all the tracks used by the Susquehanna Railroad whether devoted to the plant use or not?

A. I used the figures in your own record.

Q. And that exhibit marked P-2 shows that the New York, Susquehanna and Western Railroad Company uses exclusively 188,555 square feet of the track area which isn't [fol. 351] used for the plant at all. That exhibit shows that?

A. I don't know.

Q. You used the exhibit, didn't you?

A. I simply used certain figures.

Q. Why didn't you use all the figures?

A. Well, that job would be endless then.

Q. You think so?

A. Yes.

Q. Well, did you know that only 107,240 square feet of track area was used for plant purposes?

A. At what time?

Q. At any time. Did you know that? Did you know that?

A. You fellows ought to know it.

Q. Well, do you know it?

A. No, I haven't checked it.

Q. Did you examine or were you shown exhibit P-9 which specifies the use of those tracks, were you shown that exhibit?

A. I haven't seen that number.

Q. Didn't you know, did you know that the New York, Susquehanna & Western Railroad Company used all of the tracks in that plant exclusively for railroad purposes, did you know that?

A. I would not be in a position to know that.

Q. Then, your answer is you didn't know that.

A. No.

Q. When you looked at it last Sunday was it full of freight cars, the yard?

A. There was quite a few coal cars there.

Q. And were there any tank cars there?

A. I didn't notice any.

Q. Did you know that that yard is used constantly by the New York, Susquehanna & Western Railroad for the assembly of tank cars and coal cars and freight to supply the [fol. 352] convoys leaving New York at intervals?

A. I know the western part of the yard is.

Q. Do you know that the entire yard is used for railroad purposes so that coal cars cannot get to the coal piles at all, did you know that?

A. No.

Q. When you used the 462,000 square feet of track in your computation, you included all of the railroad tracks as well as those used by the coal plant, didn't you?

A. Which is available for coal storage.

Q. Well listen. Can't you answer a question without hedging or ad lib-ing? I will repeat the question. Did you or didn't you, and answer yes or no.

A. I used the 462,000 square feet in my estimate.

Q. And that is all the tracks in the yard?

A. I don't know.

Q. You don't know?

A. No.

Q. Now, in reaching these figures per ton, cents per ton, of the license fee, you have assumed certain quantities of coal without knowing whether those quantities of coal were ever in the yard at any one time, haven't you? Can you answer yes or no?

Mr. Chandless: That is what he testified to.

Q. Is that right?

A. I figured the potential capacity.

Q. Only capacity, is that right?

A. Yes.

Q. Then, if at any time the amount of coal that you used, the hypothetical tonnage that you used wasn't there, then, your figures would not be correct, would they?

A. No.

Q. All right. Did you have anything, did you have any figures to show how many tons of coal are handled in that plant when you made this computation?

[fol. 353] A. I simply had the figures that we used in the former hearing.

Q. In other words, you had the one figure of the amount of coal that was passed into the plant during the twelve months of 1941, is that right?

Mr. Chandless: Which was a sub-normal year.

Mr. Minard: Wait a minute.

Q. Is that right?

A. I used the figures in there. I don't know whether it is 1941 or 1942 or not.

Q. Listen. You used this figure?

A. That is right.

Q. And that is for the year 1941, isn't it?

A. According to that, yes.

Q. That shows the number of tons that went into the plant during the entire calendar year, doesn't it?

A. That is right.

Q. And if they went out of the plant a week or a month after they went in, that didn't make any difference in your computation, did it?

A. No.

Q. O. K.

(Colloquy off the record.)

Q. Now, I understood you to say that you didn't make any computations at all on the basis of the coal that went in or out during 1942 or 1943?

A. That is correct.

Q. But you used 1941 because you thought that it was a normal year?

A. I wouldn't say it was a normal year, no. I would say it was much less than a normal year.

Q. What is a normal year, what tonnage would you call a normal year?

A. I am not in the coal business.

Q. You said it was much less than a normal year. I want to know the basis for that opinion. What is or was a normal [fol. 354] year?

A. I say I am not in the coal business.

Q. Well, you are free with opinions, but when you come to justify them, you are not in the coal business.

Mr. Chandless: You are arguing with the witness.

Mr. Minard: I know, but the witness is intelligent enough to know.

Mr. Chandless: You know what he did, he did the same as your witnesses did, at my instructions he took a set of figures and computed a mathematical result from those figures. If they haven't any basis, that is my hard luck or misfortune.

Q. You say 1941 was a sub-normal year in the handling of coal.

Mr. Chandless: I told him that.

Q. Do you know of your own knowledge whether it is or not?

A. Well,——

Mr. Chandless: You don't pretend to know anything about the coal business, do you?

Mr. Minard: Now, wait a minute.

Q. You are an expert when you want to be, but not on cross-examination. Did you assume, for the purpose of computing the cents per ton, that the amount of coal put into the plant in 1941 was a normal basis?

A. No, I didn't.

Q. Then, when you said that you didn't use 1942 and 1943 figures because they weren't normal, there was interference by strikes, you didn't mean that, did you?

A. I know there was a shortage then.

[fol. 355] Q. How much of a shortage was there?

A. I am not in the coal business.

Q. How much of a shortage was there?

A. I don't know.

Q. Would you know there was a shortage?

A. I know a number of places try to get coal.

Q. Did you know that there was a shortage?

A. You tried to get coal last year.

Q. Did you know that there was a shortage?

A. From my own experience.

Q. And you know there was a shortage of coal at the Coalburg plant?

Mr. Chandless: I told you there was, didn't I?

The Witness: Yes, I did.

Mr. Chandless: All right. Your figures are based on what I told you.

The Witness: That is right.

Q. In other words, you made no independent investigation to determine the basis of any of these computations, is that right?

A. That is right.

Q. So that these are merely, you merely took a pencil and figured up certain things that Mr. Chandless told you to figure up, is that right?

A. Correct.

Q. They didn't need to qualify you as an expert, then. I have an adding machine down in the office that can do all that. Now, you computed certain tax values of coal at certain prices. Of course, that would be assessing it on a hundred percentage basis, wouldn't it?

A. Yes, sir.

Q. Is that the way all property in Saddle River is assessed?

A. I am not an assessor.

Q. I know you are not, but there are so many things you are not and I wonder what you are.

[fol. 356] Mr. Chandless: He is an engineer and a very good one at that.

Q. You assume that all property is assessed at a hundred per cent of value, didn't you?

A. I did, I did in this.

Q. Do you know whether that is true or not?

A. I am not an assessor.

Q. Do you know whether or not it is true, whether it is true or not?

A. I don't know.

Q. All right, that is the answer. Now, when you computed that cost per ton, on the assessment of coal, you computed a tax on a federal tax of four cents a ton, didn't you?

A. Yes, sir.

Q. Is that the customary way of determining the current value of a thing to include the taxes on it?

A. According to my income tax, yes.

Q. Well, do you have any coal in your income?

A. No.

Q. Now, then, do you think that it is a correct way to compute the value of an article for tax purposes to add the tax itself to the value, the right thing for taxing purposes?

A. That is the actual cost of the article.

Q. Well, can you answer my question?

A. No.

Q. Well, all right. Now, this tax that you computed at $5.85, you included the freight rate on the coal?

A. I did.

Q. So you taxed the freight trate at $5.85 per hundred, is that right?

A. Correct.

Q. Well, is it customary to tax railroad transportation locally here in this township of Saddle River, Saddle River Township?

A. I don't see why it isn't.

Q. Did you ever read the Constitution of the United States?

A. I did.

Q. Do you know that goods in transportation cannot be taxed in inter-state commerce?

[fol. 357] Mr. Chandless: He didn't say interstate commerce. He said when an object is worth $2 in Pennsylvania and costs $2 in New Jersey, you wouldn't bring it here unless it was worth $4, and if you had to pay a federal tax and you paid a federal tax, you wouldn't bring it unless you got $4.04 on it. You and I can argue those things before the court. This witness isn't competent to determine what the true value is. I submit that the transportation costs are an element of value. We all know from common knowledge, that it teaches us that Pattison & Bowns wouldn't bring a ton of coal down from Pennsylvania and pay a federal tax on it unless when it got here it was worth the total of what was paid for it and the freight and federal taxes and more. They are not in business to serve the public.

Mr. Minard: When you get through making a speech we will go on with the examination.

Mr. Chandless: Just to understand each other——

Mr. Minard: I understand you perfectly.

Q. Now, did you know that when the coal was taxed, in years past, for a great many years back, it was taxed, assessed?

A. I don't know the exact figures.

Q. Now, how much would it have been assessed for at your computation in 1943?

A. I don't know.

Q. You don't know whether it would be more or less than that?

A. No.

[fol. 358] Q. In other words, to know the amount you would have to know how much coal was there?

A. Yes.

Q. And you didn't know that?

A. No.

Q. Now, you computed certain areas of saloons and you know that a saloon is licensed under the police power and not for revenue, don't you?

A. I am not a lawyer, so I cannot say how it is licensed. I know there is a license.

Q. The answer is that you don't know?

A. No.

Q. Now, then, how many floors had the Shack?

A. One floor.

Q. How many floors did Paley's have?

A. One floor.

Q. And how many floors had DeRosa?

A. There were living rooms upstairs, I believe.

Q. And how much was the total floor area of the two floors?

A. I didn't figure that.

Q. And Ed's place, did that have more than one floor?

A. No, one floor.

Q. They are licensed, all licensed under the liquor law, aren't they?

A. That is my understanding.

Q. Now, those are within the classes that are commonly known as nuisance licenses, aren't they?

Mr. Chandless: I object. He is not competent to answer that.

A. I don't know.

Q. You don't know.

A. No.

Mr. Chandless: For your information, the majority of people in Saddle River consider your coal plant more of a nuisance.

Mr. Minard: Mr. Chandless, if you could shut off the gas leakage you have, we could get somewhere.

[fol. 359] Q. You know that liquor licenses are in a special class?

A. I know there is some special provision for it.

Q. Now, you wouldn't compare a liquor business with a grocery business, would you, from the standpoint of public health and welfare?

A. Not necessarily.

Q. And you wouldn't compare the way a coal yard is conducted either, on the same basis, would you?

A. What kind of a coal yard?

Q. Any kind of a coal yard. You wouldn't compare a coal yard and a saloon on the same basis of public health and welfare, would you?

Mr. Chandless: What he wants to know is whether you would rather have a saloon or a coal yard.

Mr. Minard: Mr. Minard knows what he wants.

A. In my municipality we have all kinds of complaints about coal yards and about taverns too.

Q. Can you answer my question?

A. No.

Q. A rendering plant or a slaughter house is generally classified as a potential nuisance, isn't it?

A. Yes, sir.

Q. That is the reason why you have a high license on this rendering plant out here, isn't that right?

Mr. Chandless: I object. He is not competent to testify to that.

A. I don't know.

Q. Isn't that the reason there is a $500 license on that plant?

A. So I understand from the testimony.

[fol. 360] Q. You understand that that is because it is a potential nuisance?

A. I don't know why they put it on. I didn't happen to be in the township when it was put on.

Q. You have no idea why they have a high license on a slaughter house?

A. I imagine because there is a certain amount of inspection necessary.

Q. Your idea is then that the license fee ought to relate to the cost of inspection necessary for the licensed business, is that right?

Mr. Chandless: I object.

Q. Well, it was your suggestion. It wasn't mine. Can you answer the question?

A. No.

Q. All right. Now, on the carnival situation, the annual carnivals, you said that the license fee would represent five cents a square foot. Did you ever measure an annual carnival to see how much space they occupied?

A. No, I did not.

Q. Do you know how much space is occupied by any carnival that has ever existed in Saddle River Township or elsewhere?

A. I have seen carnivals there and by observations.

Q. When did you see the last carnival there?

A. I would say perhaps five years ago.

Q. That was an annual carnival?

A. No, that was a weekly carnival.

Q. Did you measure the area it occupied?

A. Not with a tape measure, no.

Q. Carnivals vary in sizes, don't they?

A. Yes, sir.

Q. Anywhere from a Gypsy fortune-telling tent to a Barnum & Bailey carnival?

A. I wouldn't call it a carnival.

Q. That is the way it is tested. According to your theory [fol. 361] it might be anything from the size of a fortune-teller's tent up to the size of a full-sized circus?

A. No, because they specify a circus as a different or certain fee.

Q. Then, the carnival, either an annual carnival or a weekly carnival, may occupy any area of ground?

A. It would occupy, but generally on these small carnivals they go about from town to town and they occupy an acre of ground.

Q. The ordinance doesn't limit them to any area?

A. No.

Q. So, the fellow who occupies one city block has to pay just as much as a man who occupies an acre of ground?

A. That is right.

Q. And it doesn't have anything to do with how much money they take in or anything of that sort?

A. No, apparently not.

Q. As an engineer, did you figure that a computation has any validity, that is, not based upon actual figures?

A. At times we make certain assumptions.

Q. Then, you always rely upon the result of your assumption?

A. Not necessarily.

Q. Have you ever observed the brook in the Coalburg plant when the water was high in Saddle River?

A. We had lots of complaints about it and worked with the mosquito commission on it.

Q. In fact, all these ditches are filled up when the river is flooded?

A. Yes, sir.

Q. So they are not sufficiently above the river level to drain off all stages of the water condition in Saddle River?

A. It depends upon the culvert conditions.

Q. Can you answer the question?

A. It depends upon the culvert condition. In other words, the culvert water must pass under certain culverts. The back-water depends upon how much debris and water collects.

[fol. 362] Q. Is the high water level in Saddle River above or below the bottom of these ditches?

A. I would say generally it is slightly, Saddle River is two or three feet lower than the bottom of these ditches.

Q. You mean at all times the ditches will drain out into the River?

A. Generally, yes.

Q. Have you ever seen them when they didn't drain out?

A. No.

Q. You never did?

A. No.

Q. Have you ever seen those ditches' backwater back up and cover Saddle River Road?

A. At certain places I have seen that condition.

Q. What is the comparable levels of mean high water in Saddle River as compared with the outlet of the brook that drains from the Coalburg plant?

A. I wouldn't be able to answer that without having taken some direct measurements with levels.

Q. This map you offered in evidence——

A. You mean the tax map?

Q. Yes. Can you tell us what streets on that map are paper streets and do not exist on the ground?

A. Yes. Gardon Street is an existing street.

Q. Between what streets is it?

A. It is between Saddle River Road and Coalburg. It is laid out and improved. You have Sterling Place from Saddle River Road over to the edge of Coalburg which is paved. You have Rochelle Parkway which isn't only paved but also curbed from Saddle River Road all the way over to Maple Street, and you get in here there are paper streets here.

Q. Read them into the record.

A. All of them?

Q. Yes. You started to give the improved streets. Then, everything else is paper streets.

A. Yes.

[fol. 363] Q. You have mentioned them.

A. Yes, the improved streets?

Q. Yes.

A. Yes.

Q. Now, confine yourself to this map, Rochelle Parkway is an improved street?

A. Yes.

Q. And those are the only actual streets there?

A. They are the only physical streets.

Q. That sheet is marked what?

A. That is the sheet showing the Coalburg plant.

Q. It shows the Coalburg plant?

A. Yes.

Q. Part of it?

A. Yes, sir.

Q. Has this map got a number?

A. Yes, No. 7.

Q. What is the next one showing the Coalburg plant?

A. Coalburg is over here on Platt Avenue.

Q. You are talking now about sheet No. 3?

A. That is Platt Avenue up to Chelsea Driveway and is a constructed street from Saddle River Road. Then there is Franklin Street, Ackerman Street, Catherine Street and Harrison and Market Street and Saddle River Road are all constructed streets.

Q. All right. Now, is there any more maps that affect the situation?

A. Yes, there is. Coalburg is relatively over here on the map.

Q. How far away from sheet No. 5?

A. We can match them up and see. They are the adjoining streets.

Q. All right.

Mr. Chandless: We will give you a composite map.

Q. Will your composite map show what part is from one sheet to another?

Mr. Chandless: It will be all on one sheet.

Mr. Minard: We have to identify these. He is stating the improved streets. All right.

[fol. 364] A. (Witness continues answering:) Here is Coalburg over here, and the following streets on here are improved.

Q. Referring now to what?

A. To sheet No. 5, Glen Road and McArthur Drive. It is from Glenn Road to this road here, Platt Avenue, from Glen Road to Welcome Road, and all of Welcome Road, and again Franklin Avenue, Ackerman Avenue, Catherine Avenue, Central Avenue, Harrison Avenue and they are all improved streets, having houses in them. This is all paper streets over here, so far.

Mr. Chandless: How about Henry Street?

The Witness: It is improved as well as Central Avenue.

Q. Is Market Street improved.

A. Oh, yes, sir. It is a state highway. These streets are improved here.

Mr. Chandless: In other words, there are streets that cross here, cross Market Street.

The Witness: Yes, these are all improved, yes.

Mr. Chandless: In other words, practically every street on that map is improved?

The Witness: Yes, with this exception, except from here over to there. That one is not improved.

Q. From Glenn Road?

A. Over to Platt Avenue it is not constructed.

Mr. Chandless: Going back to this one, so we get the record straight, you didn't mention Washington or Albany Streets.

[fol. 365] Mr. Minard: He mentioned that one.

The Witness: Washington and Albany Streets, facing this way, yes.

Q. Now, then, let me ask you how many of these blocks that are shown on this exhibit, the tax map, is divided up into building lots, are assessed at acreage on the tax map, on the records of the township?

A. Well, I would say it is my experience, I would say, from general experience, wherever there is a block and lot number shown here it is assessed by block numbers.

Mr. Chandless: That is a legal proposition. It must be. When they lay out a golf course, as a legal proposition——

Mr. Minard: Let us stick to this thing.

Q. Will you say that none of these blocks that are shown here, divided into lots, are assessed as acreage?

A. I will say they are all assessed as blocks and lots.

Q. Are you sure of that? Have you looked to see?

A. No, I haven't.

Q. Under oath, you won't want to say they are or not?

A. From time to time we have had transfers come through from Hackensack which the assessors referred to us and we had to give them the lot and block number under the transfer of the deed.

Q. That hasn't anything to do with my question.

A. As to the actual mechanics of the assessors, how they keep their records, I don't know.

Q. Now, also, to the north of the Coalburg plant, where you show lots and blocks, on assessment sheet No. 7, there is a considerable area of that occupied by woods, is it not?

A. By forests. No, I won't say so.

[fol. 366] Q. Well, have you been to see it, do you know?

A. I know the territory. There is brush there.

Q. No standing trees?

A. There are some, yes.

Q. When you say some, don't you know that a great part of this area back of the Coalburg plant is wooded land?

A. There is some wooded land around there, yes.

Q. You wouldn't say that the greater part of it is wooded land back of it?

A. It depends upon what your definition of wooded land there is.

Q. Do they go out hunting in it?

A. They go hunting in the brush.

Mr. Chandless: And you go hunting in open country too.

Mr. Minard: I suppose you can hunt anywheres in Saddle River Township.

A. (Witness continues answering:) I don't think it is so. I am not familiar with it.

Q. You have to get a license?

A. I don't know. I know you have to make a statement.

Q. Now, you say that all these lots and blocks showing on this tax map represent maps filed by developers, people who are getting ready to sell them as building lots, is that right?

A. In years gone by.

Q. But, you don't or couldn't tell us how many of those were actually developed?

A. Except those I have pointed out where the streets were improved.

Q. Those are the only ones?

A. The names of all these developments are right on the map. Here in this map here. There is the Klein Realty and Improvement Company. That is one case here. And then there are others.

[fol. 367] Q. Of course, the fact they are here is no indication of whether or not or to what extent the development has been carried out, is there?

A. Yes. In this particular case, in this particular tax map which is unusual, they do spot all the buildings and from this, by looking it over, you can see where the streets are probably improved.

Q. Wherever there is a house, it is an open street?

A. Yes, open to traffic.

Q. I meant, there is no indication by this map as to what extent these proposed developments were ever carried out, is there?

A. What do you mean?

Q. Could you tell by this map?

A. Yes, I could, very distinctly. I would take this particular map, there are a number of houses on this street and here on this street also. That is an indication it has been developed.

Q. That is the only indication you have that it has been developed?

A. Except from personal knowledge of some of the stuff, that I know about.

Q. And if there is a farm house anywheres in the neighborhood, is that on the map?

A. Generally, I believe so. I didn't prepare it.

Q. Let us look at Garden Street.

A. Here is a number of houses.

Q. Let us look at Garden Street, is there a farm shown on the corner of Saddle River Road and a barn in back of the house shown there?

A. On the southwest corner it indicates something. It could be a barn. However, it is pretty big for a garage.

Q. Well, it is.

Cross-examination.

By Mr. Bain:

Q. Mr. Harley, shortly prior to January of 1943, I think it was in the month of December, you were asked to ascer-[fol. 368] tain the area of the place at which the coal storage business was being carried on at Coalburg?

A. Yes, sir, that is correct.

Q. And you went down to the plant when, in December of 1942?

A. I wouldn't know without referring to my diary.

Q. It was before January, wasn't it?

A. Sometime in that neighborhood.

Q. And you examined the plant?

A. Yes.

Q. And you made some calculations of the area of the place at which the business was being conducted?

A. That is correct.

Q. Did you make several different calculations and arrive at several different results?

A. No. My mind is a little hazy on that. As I recall it I figured the area occupied by the coal storage operations as a certain amount.

Q. You stated, I think, roughly speaking, at a million and five hundred thousand square feet?

A. Yes, sir.

Q. Was it much more than that subsequently?

A. No. In fact, I recall the Coalburg testimony as giving a million and——

Q. Never mind the testimony. I am trying to find out what you did before this testimony was put in. At what figure did you finally arrive as the area of the place at which the business was being conducted?

A. I believe it was about 1,500,000.

Q. It wouldn't be fluctuation or a difference of 50,000 square feet, one way or the other?

A. I wouldn't say without going back to my original figures.

Q. You see a difference of 100,000 square feet might make a considerable difference.

A. It was much less than 100,000.

[fol. 369] Q. It might be a million, 500,000, and a few odd thousand?

A. In other words, figuring it from a practical standpoint——

Q. Were you informed at that time the township was contemplating passing an ordinance for licensing the business?

A. I knew in a general way they wanted something. Mr. Chandless asked me the figure as for the purpose of licensing, the licensing ordinance. I don't know. I presume.

Q. Weren't you told that it was for that purpose, what the purpose was for?

A. I wasn't interested or paid too much attention to it. We don't ask them what it was for.

Q. Was the licensing ordinance mentioned to you at that time?

Mr. Chandless: I object. Any conversation between Mr. Harley and myself wouldn't be binding on the township.

A. As I recall, I have even forgotten whether it was Mr. Chandless or Mr. Weller that asked me for the information.

Q. Regradless of who it was that asked you for the information, were you told or was it indicated to you that the township was then contemplating passing a licensing ordinance?

A. I knew there was something. I am simply an employee. I do not make it my business.

Q. You knew that something was contemplated about a licensing ordinance?

A. I presume it could be.

Q. You knew it was, didn't you?

A. I knew there was something they were doing.

Q. And that something was a licensing ordinance?

A. As it later revealed itself.

[fol. 370] Q. You knew at that time, that the township was contemplating passing a licensing ordinance and that

was the purpose of your ascertainment of the area of the place at which the coal storing business was done?

A. I knew they were figuring on something. I supplied figures to them.

Q. Wasn't that something a licensing ordinance?

Mr. Chandless: We made no secret about that.

Q. Wasn't that something a licensing ordinance?

A. I presume it was.

Q. You knew it was. I am asking you what your knowledge was. You knew.

Mr. Chandless: I object.

Q. Who asked you to go down and measure off the plant?

A. Mr. Chandless.

Q. Didn't he tell you what they were contemplating?

A. I don't recall.

Q. Would you say he didn't mention a licensing ordinance to you?

A. I didn't know what happened at that time. I knew there was an argument about Coalburg. I am furnishing information like that to attorneys all the time.

Q. Listen now. Will you say now that Mr. Chandless did not mention to you a township licensing ordinance to you at that time?

A. I don't recall.

Q. You won't say that he did not?

A. I wouldn't say he did.

Q. You just refuse to answer the question?

A. No. I don't know. I am supposed to swear to the truth. You want me to say something that I am not certain about.

[fol. 371] Q. I think we have enough on that.

Now, you made various calculations of what a license fee for the carrying on of the coal storage business at Coalburg would amount to per ton of coal?

A. Yes, sir.

Q. When did you first make those calculations?

A. Yesterday.

Q. At whose request?

A. At Mr. Chandless' request. We told you——

Q. Now, what amount of a total license fee did you take into consideration in making those calculations, if any?

A. I didn't take any. I simply took the present figure of three-quarters of a cent.

Q. And applied that to a ton of coal?

A. I applied it to a certain area, again based on an assumption of several areas which I stated before.

Q. And on an assumption to the total number of tons of coal that could be stored in that area?

A. Yes, sir.

Q. Did you ever make a precise arithmetical calculation of the number of tons of coal that could be stored on the area you mentioned?

A. I wouldn't say precisely. I made a rough calculation.

Q. Did you in making that calculation assume that the coal be stored in the area indicated by the small circles on the map?

A. Here are the maps?

Q. And the two large circles?

A. Yes, sir.

Q. But you didn't assume that coal would be stored on the large segment of a circle embracing each of the two small circles on the map?

A. No. I didn't figure that, just the actual conical piles.

Q. Don't you know, as a matter of fact, that the coal is stored not only on the small circles but within the area of the large segment?

[fol. 372] A. I know in loading they have a device that goes along and pulls the coal up through that circle.

Q. You didn't take that into account in making your calculation?

A. No, but the actual area occupied——

Q. You attempted to state some tax per ton of coal that wasn't based upon any actual value of the coal to your knowledge, was it?

A. It was simply based on the prices shown in that Pattison & Bowns circular.

Q. With respect to these liquor licenses, you took only the ground floor space, that is the floor space on the first floor?

A. Yes.

Q. In some instances the tavern had an attachment to it, a sort of a picnic ground attached to it, hadn't it?

A. In the one I measured, no.

Q. Did you measure up the one called the Shack?

A. The Shack?

Q. Yes, hasn't that got a picnic ground attached to it?

A. Yes, but that isn't part of the tavern.

Q. Don't they sell liquor there on the picnic ground?

A. I don't think so. I have heard a number of times and Mr. Chandless mentioned to me that they must sell the liquor within the actual building.

Q. Don't they serve it on the picnic ground, isn't that what the picnic ground is for?

A. I don't know. I have never been there.

Q. But, you don't include the picnic ground?

A. No.

Q. It is attached to the tavern?

A. Yes, sir.

Q. How large is the picnic ground?

A. You are asking me to guess again.

Q. It is ten times the floor space of the tavern, isn't it?

A. Well, I don't know.

Q. Or more?

A. Yes.

[fol. 373] Q. Another one of the places has a drive-in service where you drive into a parking space and have your liquor taken out to you?

A. I don't think so.

Q. Are you sure?

A. I can't tell you by personal experience. I never heard of such a place.

Q. You didn't take that into account, if it is there?

A. No.

Q. You won't say there isn't that there, that there is none?

A. I can't tell.

Q. Don't you know Saddle River pretty well?

A. Yes, sir.

Q. Don't you know one of these taverns, whatever you want to call them, has a parking space attached and people park there and have drinks taken out to them?

A. I don't know.

Q. Now, I think you said that these taverns, with one exception, are one-story high?

A. Yes.

Q. And they have cellars underneath them?

A. I didn't investigate that. The two of them, I know haven't.

Q. Isn't it customary to have a cellar in those places where they store keg beer?

A. Not necessarily. I have seen a lot that haven't got a cellar.

Q. You know these haven't?

A. I know two of them haven't.

Q. How many of them have?

A. I haven't made a census of all the taverns in Saddle River.

Q. You don't know?

A. No.

Q. You didn't include cellars for storage purposes?

A. No.

Q. Or any of the ground around the place?

A. No.

Q. Do you know whether the license covers the whole place, the land and buildings?

A. My understanding is and I am only speculating, it is [fol. 374] my opinion, of what I heard at the different meetings in different, in different townships, is that a license only covers a certain specified part of the building where the actual bar is.

Q. It doesn't cover the ground?

A. Not to my knowledge.

Q. You won't say that it doesn't?

A. I think it would have to be a special license for it.

Q. You don't know?

A. No.

Q. Now, Rochelle Park adjoins Saddle River?

A. Yes, sir.

Q. And Rochelle Park immediately adjoining has four or five feet, is four or five feet higher than Saddle River Township, isn't that so?

A. There are various levels.

Q. What is the elevation of the railroad track embankment above ground, above level, through the Coalburg ground?

A. Five or six feet.

Q. And that is to keep the track on a grade with the level with the track at Rochelle Park?

A. I presume so.

Q. Rochelle Park adjoining the portion of Saddle River covered by the Coalburg plant is about five feet lower than the adjoining part of Rochelle Park?

A. That is true, at the one particular point. You are making, however, a general statement.

Q. I am taking the part of the township covered by the Coalburg plant as about five feet below the level of the adjoining land in Rochelle Park, isn't that correct?

A. I won't say so. If you want me to qualify that, I would be glad to.

Q. How?

A. I would first have to know the grade of the railroad tracks going from Coalburg across Rochelle Park.

[fol. 375] Q. Didn't you say heretofore that the railroad embankment was for the purpose of maintaining a grade?

A. Yes, a minimum grade. That doesn't say there isn't a drop in those tracks. We may have a drop of so much for every hundred feet.

Q. Don't you know that the Coalburg plant is about five feet below the level of the adjoining land on the Rochelle Park side?

A. I wouldn't like to make that statement without taking actual measurements of the elevation.

Q. You wouldn't like to make the statement as to the exact difference?

A. Yes, sir.

Q. But, generally, you say that is the fact?

A. Generally, within a foot or two.

Q. Now, doesn't the first street in Rochelle Park beyond the Coalburg plant across the railroad at grade?

A. The first street?

Q. Yes, in Rochelle Park beyond the Coalburg plant.

A. That is correct.

Q. It crosses the railroad at grade?

A. Yes, sir.

Q. Then, you come down into the Coalburg plant and you find the embankment five or six feet high?

Q. How far from the street in Rochelle Park that crosses the railroad at grade, does the embankment begin?

A. I did not get the question.

Q. How far from the street in Rochelle Park that crosses the railroad at grade, does the embankment begin?

A. Well, again, you are asking me to guess.

Q. Approximately.

A. You drop down for a matter of three or four hundred feet.

Q. And the railroad track is on the embankment across the entire Coalburg plant, isn't it?

A. It is at the east end. And as it goes towards the west end it begins to approach ground level.

[fol. 376] Q. It doesn't until it gets beyond the plant?

A. Yes.

Q. And the brook runs through the Coalburg plant?

A. Yes, sir.

Q. Do not those things indicate to you that the spot where the Coalburg plant is located is the low spot of the territory?

A. It indicates that you have a drainage area through there and it also indicates that we have some poor drainage through Coalburg because I have had a number of complaints from the mosquito commission about the cross pipes, the culverts coming out of Coalburg being rather high, which would tend to make the Coalburg lands appear swampy.

Q. How long have you lived in that vicinity?

A. About twelve or fifteen years.

Q. And do you know what the condition of the land was before the Coalburg plant was constructed?

A. No, I was pretty young when the plant was built.

By Mr. Chandless:

Q. Just one question. When you computed the area at 1,500,000 square feet, you included the tracks, didn't you?

A. I included the tracks that I considered were used for handling of the coal and the coal being stored.

Q. If you deduct those tracks from your computation, you would then have a computation of about a million square feet?

A. I wouldn't like to say without calculating it.

Q. Aren't the tracks about 450,000 square feet, as appears by the exhibit you refer to yourself?

A. That includes the main line tracks. I didn't include them. I said perhaps the figure would be 300,000 and 400,000.

[fol. 377] By Mr. Minard:

Q. Don't make any mistake. It doesn't include any track outside of the property line of the Coalburg plant.

Mr. Chandless: All right.

Q. So if the municipality determined, the township determined that the tracks wasn't a portion of the licensed premises, that would necessarily reduce the area to be licensed, wouldn't it?

A. Yes.

Mr. Minard: Who has the right to make that determination, Mr. Chandless?

Mr. Chandless: You have a right to make an application under the ordinance.

Mr. Minard: Who would make the determination for the purpose of making the licensing fee?

Mr. Chandless: You will find under section 1 or section 2, to make an application and ask for a license for a given area; you can ask for forty or fifty square feet, if you want it.

Mr. Minard: Who determines the licensing fee? Could the operator of the plant say that he wants a license fee for 100,000 feet?

Mr. Chandless: Yes.

Mr. Minard: Anything he asks for?

Mr. Chandless: Yes. If he uses more than that 100,000 feet he might be convicted before a recorder.

Mr. Minard: Of what?

Mr. Chandless: Of using premises unlicensed. It is just the same as saloon keeper who holds a license to operate a [fol. 378] tavern on the first floor or the front room of such an address. If he sells liquor in the back room, he is selling without a license and can be convicted of it. By the same token, if you get your license, for the area that you want it, and then you went and stored coal outside of that area, you then would come under proper proceedings and you would be convicted of violating the oridnance because you were storing coal in premises not licensed. So far as you extended beyond the area prescribed by the ordinance.

Mr. Minard: I see.

Q. You computed the license fee per ton on three different areas, didn't you?

A. Correct, yes.

Q. And you computed it on the area including the tracks?

A. That is correct.

Q. And you computed it on the area which prosecutors in this case set up as being used for storage purposes?

A. Yes, sir.

Q. Without the tracks?

A. That is right.

Q. Then, you computed it on the area which according to their Exhibit P-1 appears to be piles of coal, is that correct?

A. Yes.

Q. And you also computed it on the three bases of tonnage?

A. That is correct, yes.

Q. Tonnage, 400,000 capacity as given to you by me?

A. That is correct.

Q. And also 350,000 tons?

Q. And also on the tonnage that is set forth in the exhibit of the prosecutors, is that right?

A. Yes, that is correct.

Q. I think that is all.

[fol. 379] By Mr. Minard:

Q. But, you didn't compute the other area you found was the area of the place used for carrying on the business which you said was approximately 1,500,000 square feet. If you had you would have found the license fee was $10,250, wouldn't you?

A. Well, I would have to go through the arithmetical figuring.

Q. Assuming it might be correct?

A. Yes.

Q. You don't claim you have the right to determine what area is being used for storing purposes?

A. No. It is up to the people.

Q. You mean to say that it is within the discretion of the Township Committee to determine how much area is to be included in the license?

Mr. Chandless: I say it is up to the independent warehouse operator for the Pennsylvania Coal Company to fill out an application in writing saying what portion of the premises they want licensed and then, of course, if they violate their license they might be subject to a penalty.

Q. Now, you say that you reported, in your opinion, 1,500,000 square feet being used as the place or premises where the business is conducted, is that right?

A. That includes the track.

Q. That was what is reported to the Township Committee by you?

A. To Mr. Chandless.

Q. That was before the ordinance was passed?

A. I presume so. I don't know exactly when it was.

Q. When was it?

A. I don't know. I have my diary.

Q. You can refer to it.

A. Yes.

[fol. 380] Q. Was it before the ordinance was passed?

A. It was about the time. I presume it was before. I am not sure.

Q. It wouldn't have been any good if you didn't submit it before the ordinance was passed?

A. Not necessarily.

Q. Well, the purpose of the inquiry was for consideration of or in connection with the passage of an ordinance, wasn't it?

A. Presumably.

Q. Now, then, how much of that million and a half square feet was, that you chose, was occupied by track?

A. Roughly, as I say, I haven't analyzed it in that way, but if you want me to guess——

Q. No. You are testifying under oath and you are an engineer. Tell me how much of that area was occupied by tracks.

A. I will say 350,000 square feet.

Q. And by what process did you determine which of the total area tracks on the property was used for the storage business?

A. I simply took the area from the files and on the basis of that used that.

Q. I know, but how did you choose among the tracks to determine which of them you would include?

A. I assumed there were two main line tracks of the Susquehanna Railroad. I figured from here north on a triangle.

Q. You are familiar enough with a railroad to know what a main line track is?

A. Yes. It is these right here. Yes, these two here, on the map. They keep these two tracks clear for back and forth movements with their streamliners and their other traffic.

Q. Which traffic? Show me on Exhibit P-1, which tracks you include?

A. I excluded the two tracks to the north side, in other words, I figured up to about here.

[fol. 381] Q. The Coalburg plant is over here, isn't it?

A. Yes.

Q. In other words, you included one, two, and three of the Susquehanna Railroad tracks that lie outside, that lie inside of the railroad line, the right of way of the line, not the Coalburg property at all. Do you see it here?

A. Yes.

Q. The three tracks that you included there are on the railroad right of way and not on the Coalburg plant?

A. That is correct, but I make this reservation first, that those tracks are used for storage of cars in the process of loading.

Q. Well, do you know that personally?

A. I have seen many coal cars right on this third track, as I went by on the Susquehanna Railroad train.

Q. All right. Did you include any tracks over here, like track Q and R?

A. I am only speaking from memory and I may be wrong. As I recall it is something like this and then along here. It was an irregular figure.

Q. You included all the tracks that were within this irregular piece that you used?

A. That is correct.

Q. Without regard to whether those were Susquehanna Railroad tracks or the plant tracks?

A. I went on the assumption those were used for the servicing of the coal storing.

Q. You got no information from anybody to verify that?

A. From observation.

Q. You didn't attempt to find out whether those loaded cars were in the Susquehanna Railroad yard awaiting the Weehawken dumper or the Edgewater dumper or whether they were storing coal?

A. I presumed they were being unloaded.

Q. You assumed that?

A. Yes, and I think at the time I saw some unloading.

[fol. 382] By Mr. Chandless:

Q. Your figures more or less agree with the engineer of the Pennsylvania Coal Company, do they not?

A. On the total figures I am somewhat less.

Q. Not an awful lot?

A. No, probably 100,000 less.

Q. You mean a combination of their figures?

A. What they call their track figures.

Q. You found the storage area as they computed it to be about the same?

Yes.

Q. You found the radius of the coal piles about the same?

A. Yes, sir.

Q. And the track area about the same?

A. Yes.

Q. So that we get back to the old proposition that you don't pretend to determine whether railroad tracks are used for storage or not, do you?

A. I am not interested in that, now.

Q. That is all.

Mr. Minard: I think that is all.

Mr. Chandless: That is all except I want to put in, I want to offer in evidence, as a single exhibit, the pleadings and docket entries in the United States District Court.

Mr. Minard: You mean the complaint?

Mr. Chandless: The complaint.

Mr. Minard: And the answer and the application?

Mr. Chandless: The complaint and intervening petition, and the preliminary restraining order. The order for intervention, the notice of motion for a preliminary injunction and the order denying the preliminary injunction and the docket entries.

Mr. Minard: Can't we abstract them in some way?

[fol. 383] Mr. Chandless: Not very well. We contend there is res adjudicata as to a material part of this case.

We will offer them as one exhibit, together with this. Now, one other offer I want to make, and then we will be through. This will be marked D-4. I want to offer certain testimony into the state of the case in the New Jersey Court of Errors and Appeals in the case of the Independent Warehouse, Inc. against the Township of Saddle River, as follows, page 39.

Mr. Minard: I object to it being used in this case unless the witness is examined and cross-examined.

Mr. Bain: I will make the same objection and on the further ground that the testimony offered is entirely immaterial and irrelevant and incompetent.

Mr. Chandless: I want to add to my statement that the testimony of Roy W. Radcliff, who is a witness in this case——

Mr. Minard: I object to it on the further ground that a part of the testimony of the record is incompetent unless you want the whole record of the testimony in.

Mr. Bain: I object to it on the further ground that Mr. Radcliff was produced, sworn and testified as a witness in the present proceeding, and would have been examined on that subject if you wanted to. Certainly, his testimony is entirely inadmissible now.

Mr. Chandless: Examination of it will develop he was examined in connection with it and he denied it and consequently this testimony is offered on the basis of contradiction.

[fol. 384] Mr. Minard: Anything he wasn't confronted with is inadmissible.

Mr. Chandless: Except on the basis of admission or contradiction which is always evidential.

Mr. Minard: What part do you want to include?

Mr. Chandless: Six or seven questions. I will read them here.

Mr. Minard: No, we will not allow you to read them here.

Mr. Chandless: Well, certainly, I am going to read them.

Mr. Minard: O. K. you read them, but we will go out. We are through.

Mr. Chandless: There is no question when a witness contradicts himself——

Mr. Bain: He has the right to be confronted with his testimony.

Mr. Minard: And you have to do it with him here.

Mr. Chandless: That is for us to argue.

Mr. Minard: No, it is the law.

Mr. Chandless: The following testimony of Roy W. Radcliff, on page 39 was submitted. Now, I would desire to have it appear on the record that these are read against protest of counsel.

Mr. Minard: And note on the record that it is read after counsel had left the room and the hearing has been closed.

Mr. Chandless: "I show you a letter from Pattison & Bowns Company and ask you whether or not that would refresh your recollection, (handing the witness a paper)"

and the answer is "No, I have nothing to do with him. I [fol. 385] don't know any thing about it. He was never connected with Pattison & Bowns. So, you say then that the prosecutor Pattison & Bowns had no authority to say that you people operated the plant, and the answer is I don't know anything about that. You can answer the question, you are an officer in the Pennsylvania Railroad Company, aren't you? and the answer is, That is right. Were Pattison & Bowns right or wrong when they wrote the tax collector this letter, and by Mr. Bain, as to what, and Mr. Chandless, as to the facts in the letter. The witness, what are the facts, Mr. Bain, and the answer, there are many facts stated, which one? Question: You examine the letter fully and tell us whether or not the facts set forth in that letter are correct, and the answer is, The facts are not correct. The Pennsylvania Coal Company wasn't operating the coal storage plant. Mr. Chandless, I would like to have this marked for identification, a paper referred to was received and marked Defendant's Exhibit 1 for Identification. And further, as to the same witness, at page 44 in the state of the case, the question, Did you know that Pattison & Bowns, the prosecutor in this action, wrote the tax collector and said that the Erie Railroad was taking over the plant. Answer, No, sir. Question, I show you a letter and ask you to refresh your recollection (handing the witness a paper). Mr. Minard, Identifying the letter by date. Mr. Chandless, Yes, I will have it marked. Answer, No, I don't know anything about that. [fol. 386] Mr. Bain, What is the date of that letter? Mr. Chandless, February 28, 1939. Mark it for identification, please. The paper referred to was marked Defendant's Exhibit 2 for Identification. Question. Do you know anything about the transaction at all? Answer, No, sir. Question, Do you know what they refer to when they wrote that letter? Answer, No, sir. Question, And also Exhibit D-1 and D-2, appearing on page 168, and 169 of the state of the case, being the letters referred to in the testimony in the above testimony."

[fol. 387] In New Jersey Supreme Court, October Term, 1944

No. 243/244

Independent Warehouses, Inc., a Corporation of the State of New York, and Pennsylvania Coal Company, a Corporation of the Commonwealth of Pennsylvania, and Erie Railroad Company, a Corporation of the State of New York, Intervening Parties, Prosecutors,

vs.

William Scheele, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants

James Thompson, Prosecutor,

vs.

William Scheele, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants

Argued October 4, 1944.

On Certiorari.

Before Justices Case, Bodine and Porter

For Prosecutors, Independent Warehouses, Inc. and James Thompson: Collins & Corbin; Robert J. Bain, of Counsel.

[fol. 388] For Prosecutors, Pennsylvania Coal Company and Erie Railroad Company: Hobart, Minard & Cooper; Duane E. Minard and G. Addison Hobart, of Counsel.

For the Defendants: Chandless, Weller & Kramer; Ralph W. Chandless, of Counsel.

Opinion—Filed January 19, 1945

The opinion of the Court was delivered by Porter, J.:

The writs of certiorari in these two cases bring before us for review the convictions of the prosecutors, Independent Warehouses, Inc. and James Thompson, its employee, for violation of Section I of an ordinance of the defendant

municipality on a charge of storing coal in a warehouse without having first obtained a license therefor. The ordinance in question provides for the licensing of the business of conducting the storage of personal property in a warehouse for hire and provides a penalty for violation of the said ordinance of imprisonment not exceeding ninety days or a fine not exceeding $200.00, or both. It is not denied that Independent Warehouses, Inc. was operating such a business on premises within the municipality at storage yards commonly called Coalberg and that Thompson was employed by it.

Independent Warehouses, Inc. is a corporation of New York, authorized to do business in New Jersey, and is engaged in storing goods for hire in ten states, including the warehouse at the Coalberg plant. It has operated this plant since June 20, 1939 in the storage of coal shipped in interstate commerce, for the benefit of and at the expense of Erie Railroad Company, and has shipped over that road exclusively as an in-transit facility for interstate shipments of coal.

[fol. 389] The Pennsylvania Coal Company is a corporation of Pennsylvania where it mines and sells anthracite coal. It holds title to the Coalberg property.

The Erie Railroad Company is a common carrier by railroad engaged in interstate commerce. Independent Warehouses, Inc. and Pennsylvania Coal Company are subsidiary corporations of Erie Railroad Company, the capital stock in both corporations being wholly owned by it. The Pennsylvania Coal Company and Erie Railroad Company were allowed to intervene in these proceedings. For the purpose of this litigation they have been, and will be, treated as one entity.

It is the practice of the prosecutors to store large quantities of anthracite coal in their yard at Coalberg in the defendant municipality. This yard has a capacity of storing about 400,000 tons of coal. It is convenient, if not indeed necessary, in marketing this coal and transporting it to the ultimate consignee to have a place of storage in which to accumulate it during the slack season, it not being possible or practical to deliver it directly from the mines at the peak season of its need by the consumer.

The proofs show that the Erie Railroad Company and Pennsylvania Coal Company have entered into a written

contract which provides that coal be shipped to and stored at Coalberg as a public facility for in-transit storage of coal under railroad tariffs under supervision of an Erie agent stationed at Coalberg, who collects freight and storage charges. The purpose of this arrangement is to provide a reserve supply of coal in large quantities produced in slack season and made available when needed in the winter season and to facilitate the financing of the pur-
[fol. 390] chase when desired by negotiation of warehouse receipts. It also appears that shippers of coal require these facilities; that it is necessary for carriers to provide them and that the Federal Act to Regulate Commerce provides that they be furnished by the carriers upon reasonable request of shippers. The fact with respect to this coal is that it is all owned by shippers or consignees and is shipped in interstate commerce from the mines in Pennsylvania to the ultimate destination in, or beyond, the New York metropolitan area with in-transit stopover privileges at Coalberg. None of this coal is sold at Coalberg. All of it is transported in and out of Coalberg by rail.

The controversy between these parties is over the right of the municipality to levy taxes on this coal. This yard is operated as a warehouse, and the taxation of the coal was set aside by this court and our opinion was affirmed by the Court of Errors and Appeals in *Pattison & Bowns, Inc.* v. *Saddle River Township* in 129 N. J. L. 135, aff'd 130 Id. 177. It was there held that coal stored in fenced in piles on an otherwise open tract of land equipped with machinery to handle the same is within the purview of R. S. 54:4-3.20 (exempting from taxation goods stored in warehouse.)

The attempt was then made to accomplish the same result by the adoption of the ordinance under which the prosecutors were convicted. This ordinance provides for the licensing of warehouses and fixing the license fee at ¾ of a cent per square foot of storage space. It appears that the space occupied by stored coal in this warehouse on that basis of licensing fees would bring in a revenue of about $11,000 a year, a sum approximately equivalent to the amount of the tax previously and unsuccessfully levied on the coal.

[fol. 391] The prosecutors raise many questions in their attack on the legality of this ordinance, the principal ones

being that the coal in reality is being taxed by the license fees, whereas it is exempt from taxation, because it is in warehouse as held by the *Pattison & Bowns* case, *supra;* also it is exempt from taxation because of its character as interstate commerce, also because of an unreasonable, arbitrary, capricious and discriminatory exercise of the licensing power.

We think these arguments are well made and that the ordinance is invalid. The prosecutors were engaged in a legitimate business, and it seems to us that the enactment of this ordinance was not a reasonable exercise of the police power for the promotion of public health, safety or general welfare but was an arbitrary attempt to raise revenue by discriminating against the business of prosecutors in the guise of license fees, and to thus secure from it a sum equivalent to taxes which would accrue, were the property not exempt. Compare *Resciniti* v. *Board of Commissioners of Belleville*, 117 N. J. L. 1; *Vassallo* v. *Orange*, 125 N. J. L. 419; *N. J. Good Humor, Inc.* v. *Bradley Beach*, 124 N. J. L. 162; *Gurland* v. *Kearny*, 128 N. J. L. 22; *Passaic* v. *Paterson Bill Posting Co.*, 72 N. J. L. 285; *O'Mealia Outdoor Advertising Co.* v. *Rutherford*, 128 N. J. L. 587; *The Great A. & P. Tea Co. Inc.* v. *Camden*, 122 N. J. L. 47; *Giant Tiger Corp.* v. *Camden*, 122 N. J. L. 240; *American Grocery Co.* v. *New Brunswick*, 124 N. J. L. 293, aff'd 126 Id. 367.

This business was exclusively interstate. It did not cease to be such by reason of the interruption of the shipment for storage purposes at Coalberg. The facts in the instant case distinguish it from *Lehigh & Wilkesbarre Coal* [fol. 392] *Co.* v. *Junction*, 75 N. J. L. 68, aff'd 75 Id. 922. In this case the taxation of coal was sustained because the coal was not subject to interstate commerce, as its destination was in this state where the tax was levied. It was stored here indefinitely until sold. In the instant case the purpose of the in-transit storage was for the economic reasons stated. Coalberg was not its destination. Its journey was simply interrupted for the purpose of storage and not for sale. It being a subject of interstate commerce, it is within the exclusive jurisdiction of Congress and the Interstate Commerce Commission. It may not be interfered with by the imposition of this license fee, which we think was upon the occupation or privilege of

carrying on such interstate commerce. Compare *Erie Railway Co.* v. *The State*, 31 N. J. L. 531; *West Jersey & Seashore Railroad Co.* v. *Lake & Risley Co.*, 105 N. J. L. 314; *United States* v. *Pennsylvania Railroad Co.*, 242 U. S. 208; *New Jersey Bell Telephone Co.* v. *State Board of Taxes & Assessments*, 280 U. S. 338.

For these reasons the ordinance will be set aside, and the convictions under review will be reversed.

[fol. 393] IN NEW JERSEY SUPREME COURT

Writ of Certiorari

INDEPENDENT-WAREHOUSES, INC., a Corporation of the State of New York, and Pennsylvania Coal Company, a Corporation of the Commonwealth of Pennsylvania, and Erie Railroad Company, a Corporation of the State of New York, Intervening Parties, Prosecutors,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants

RULE REVERSING JUDGMENT OF THE RECORDER OF THE TOWNSHIP OF SADDLE RIVER, N. J. (INDEPENDENT WAREHOUSES, INC.)—Entered January 29, 1945.

The court, having inspected the transcript and proceedings of the Township of Saddle River, New Jersey, and William Scheele, Recorder of said Township, returned with the writ of certiorari in this cause and the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same, it is on the 29th day of January 1945.

Ordered that the judgment of the Recorder of the Township of Saddle River, be reversed, set aside, vacated and made for nothing holden.

Entered January 29, 1945.

[fol. 394] On Motion of Collins & Corbin, Attorneys of Prosecutor, Independent Warehouses, Inc.; Hobart, Minard & Cooper, Attorneys of Prosecutors; Pennsylvania Coal Company, Erie Railroad Company.

[fol. 395] IN NEW JERSEY SUPREME COURT

On Certiorari

INDEPENDENT WAREHOUSES, INC., a Corporation of the State of New York, and Pennsylvania Coal Company, a Corporation of the Commonwealth of Pennsylvania, and Erie Railroad Company, a Corporation of the State of New York, intervening parties, *Prosecutors-Appellees*,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants-Appellants

NOTICE OF APPEAL. (INDEPENDENT WAREHOUSES, INC.)—Filed April 21, 1945

To: Collins & Corbin, Esqs., Attorneys for Independent Warehouses, Inc.; Hobart, Minard & Cooper, Esqs., Attorneys for Pennsylvania Coal Company and Erie Railroad Company.

SIRS:-

Take Notice that the Defendants-Appellants in the above-stated proceedings appeal from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

Chandless, Weller & Kramer, Attorneys for Defendants-Appellants.

[fol. 396] ACKNOWLEDGMENT OF SERVICE—Filed April 21, 1945

[Title omitted]

Service of a copy of Notice of Appeal in the above entitled matter is hereby acknowledged this 7th day of April, 1945.

Collins & Corbin, Attorneys for Independent, Warehouses, Inc.

[fol. 397] ACKNOWLEDGMENT OF SERVICE—Filed April 21, 1945

[Title omitted]

Service of a copy of Notice of Appeal in the above entitled matter is hereby acknowledged this 9th day of April, 1945.

Hobart, Minard & Cooper, Attorneys for Pennsylvania Coal Company and Erie Railroad Company.

[fol. 398] IN NEW JERSEY COURT OF ERRORS AND APPEALS

On Certiorari

INDEPENDENT WAREHOUSES, INC., a Corporation of the State of New York, and Pennsylvania Coal Company, a Corporation of the Commonwealth of Pennsylvania, and Erie Railroad Company, a Corporation of the State of New York, intervening parties, Prosecutors-Appellees,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants-Appellants

GROUNDS OF APPEAL. (INDEPENDENT WAREHOUSES, INC.)—Filed April 9, 1945

To: Collins & Corbin, Esqs., Attorneys for Independent Warehouses, Inc.; Hobart, Minard & Cooper, Esqs., Attorneys for Pennsylvania Coal Company and Erie Railroad Company.

SIRS:

The Defendants-Appellants state the following grounds of appeal:

The Supreme Court erred in its judgment setting aside the ordinance of the Township of Saddle River entitled "An Ordinance to Regulate and License the Business of

[fol. 399] the Storage of Personal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which Said Business is Conducted and Carried On, to Prescribe Fees for Such Licenses, and to Provide Penalties for the Violation of This Ordinance," and in reversing the convictions of Independent Warehouses, Inc. and James Thompson thereunder in the above entitled matter, in one or all of the following respects:

1. Because the Supreme Court erroneously found and determined that the enactment of the said ordinance was not a reasonable exercise of the police power for the promotion of the public health, safety or welfare but was an arbitrary attempt to raise revenue by discriminating against the business of Prosecutors in the guise of license fees and to thus secure from it a sum equivalent to the tax which would accrue were the property not exempt.

2. Because the Supreme Court erroneously found and determined that the business in which the Prosecutors were engaged in this cause was exclusively interstate.

3. Because the ordinance in question was lawfully enacted for the purpose of raising revenue by the imposition of license fees pursuant to R. S. 40:52-2.

4. Because the ordinance in question established a general classification and prescribed a license fee which was not prohibitory or confiscatory.

5. Because the question of whether the Prosecutors busi- [fol. 400] ness is within interstate commerce was *res adjudicata*.

6. Because the arrangement existing between Independent Warehouses, Inc., Pennsylvania Coal Company and Erie Railroad Company, relied on as rendering the nature of the business in question in this case, within interstate commerce was violative of the Federal Interstate Commerce Act, illegal and contrary to public policy.

Dated: April 6th, 1945.

Chandless, Weller & Kramer, Attorneys for Defendants-Appellants.

[fol. 401] ACKNOWLEDGMENT OF SERVICE—Filed April 9, 1945

[Title omitted]

Service of a copy of Grounds of Appeal in the above entitled matter is hereby acknowledged this 7th day of April, 1945.

Collins & Corbin, Attorneys for Independent Warehouses, Inc.

[fol. 402] ACKNOWLEDGMENT OF SERVICE—Filed April 9, 1945

[Title omitted]

Service of a copy of Grounds of Appeal in the above entitled matter is hereby acknowledged this 9th day of April, 1945.

Hobart, Minard & Cooper, Attorneys for Pennsylvania Coal Company and Erie Railroad Company.

[fol. 403] IN NEW JERSEY SUPREME COURT

On Writ of Certiorari

JAMES THOMPSON, Prosecutor,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants

RULE FOR JUDGMENT (JAMES THOMPSON)—Entered January 29, 1945

The court having inspected the transcript and proceedings of the Township of Saddle River, New Jersey, and William Scheele, Recorder of said township, returned with the writ of certiorari in this cause and the reasons for error assigned, and heard the argument of counsel thereon, and considered the same;

It is on this 29th day of January, A. D. 1945, Ordered that the judgment of the said William Scheele, Recorder of the Township of Saddle River, New Jersey, be reversed, set aside, made void, and for nothing holden.

Entered January 29, A.D., 1945.

On Motion of Collins and Corbin, Attorneys of Prosecutor, James Thompson, Inc.

[fol. 404] IN NEW JERSEY SUPREME COURT

On Certiorari

JAMES THOMPSON, Prosecutor-Appellee,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants-Appellants

NOTICE OF APPEAL (JAMES THOMPSON)—Filed August 27, 1945

To: Collins & Corbin, Esqs., Attorneys for Prosecutor-Appellee.

SIRS:

Take Notice that the Defendants-Appellants in the above-stated proceedings appeal from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

Chandless, Weller & Kramer, Attorneys for Defendants-Appellants.

[fol. 405] ACKNOWLEDGMENT OF SERVICE—Filed April 7, 1945

[Title omitted]

Service of a copy of Notice of Appeal in the above entitled matter is hereby acknowledged this 7th day of April, 1945.

Collins & Corbin, Attorneys for Prosecutor-Appellee.

[fol. 406] IN NEW JERSEY COURT OF ERRORS AND APPEALS

On Certiorari

JAMES THOMPSON, Prosecutor-Appellee,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants-Appellants

GROUNDS OF APPEAL (JAMES THOMPSON)—Filed August 27, 1945

To: Collins & Corbin, Esqs., Attorneys for Prosecutor-Appellee.

SIRS:

The Defendants-Appellants state the following grounds of appeal:

The Supreme Court erred in its judgment setting aside the ordinance of the Township of Saddle River entitled "An Ordinance to Regulate and License the Business of the Storage of Personal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which said Business is Conducted and Carried on, to Prescribe Fees for Such Licenses, and to Provide Penalties for the Violation of This Ordinance," and in reversing the convictions of Independent Warehouses, Inc. and James Thompson thereunder in the above entitled matter, in one or all of the following respects:

[fol. 407] 1. Because the Supreme Court erroneously found and determined that the enactment of the said ordinance was not a reasonable exercise of the police power for the promotion of the public health, safety or welfare but was an arbitrary attempt to raise revenue by discriminating against the business of Prosecutors in the guise of license fees and to thus secure from it a sum equivalent to the tax which would accrue were the property not exempt.

2. Because the Supreme Court erroneously found and determined that the business in which the Prosecutors were engaged in this cause was exclusively interstate.

3. Because the ordinance in question was lawfully enacted for the purpose of raising revenue by the imposition of license fees pursuant to R. S. 40:52-2.

4. Because the ordinance in question established a general classification and prescribed a license fee which was not prohibitory or confiscatory.

5. Because the question of whether the Prosecutors business is within interstate commerce was *res adjudicata*.

6. Because the arrangement existing between Independent Warehouses, Inc., Pennsylvania Coal Company and Erie Railroad Company relied on as rendering the nature of the business in question in this case, within interstate commerce was violative of the Federal Interstate Commerce Act, illegal and contrary to public policy.

Dated: April 6, 1945.

Chandless, Weller & Kramer, Attorneys for Defendants-Appellants.

[fol. 408] Acknowledgment of Service—Filed April 7, 1945

[Title omitted]

Service of a copy of Grounds of Appeal in the above entitled matter is hereby acknowledged this 7th day of April, 1945.

Collins & Corbin, Attorneys for Prosecutor-Appellee.

[fol. 409] In New Jersey Court of Errors and Appeals, October Term, 1945

Nos. 4/28

Independent Warehouses, Inc., Pennsylvania Coal Company, and Erie Railroad Company, Prosecutors-Respondents,

v.

William Scheele, Recorder of the Township of Saddle River, and Township of Saddle River, in the County of Bergen, Defendants-Appellants

James Thompson, Prosecutor-Respondent,

v.

William Scheele, Recorder of the Township of Saddle River, and Township of Saddle River, in the County of Bergen, Defendants-Appellants

Argued October 16, 1945; Decided January 31, 1946

On appeal from the Supreme Court, whose opinion is reported in 132 N. J. L. 390.

For the appellants: Chandless, Weller & Kramer; Ralph W. Chandless, of counsel.

For the respondents, Independent Warehouses, Inc. and James Thompson: Collins & Corbin.

For the respondents, Pennsylvania Coal Company and Erie Railroad Company: Hobart, Minard & Cooper. Robert J. Bain, Duane E. Minard and G. Addison Hobart, of counsel for respondents.

Opinion—Filed January 31, 1946

The opinion of the court was delivered by.

Heher, J.:

The challenged ordinance provides for the licensing of [fol. 410] "the business of the storage of personal property in a warehouse engaged in storing goods for hire," and "the place or premises" in which such business "is conducted or carried on," and levies, admittedly as a revenue measure, an "annual fee" to be computed "on the basis

or rate of three-quarters of a cent for each square foot of the total ground area of the place and premises" devoted to the business; and it is the insistence of respondents that, since this bylaw lays the license fee upon the "place or premises" in which the storage business is carried on, "measured by land areas," it is, in effect, an additional tax "upon the property," and that, at all events, it is in substance a tax laid upon the stored coal "in lieu of personal property taxes" that would be leviable thereon were it not for the exemption granted by R. S. 54:4-3.20, and thus a negation of that legislative policy. If "perishable goods" are stored upon the licensed premises, the licensee is under a duty to comply with all health regulations "required by any federal, state or municipal authority." He is also enjoined to observe all police and fire regulations laid down by the local "police and fire authorities." And there is provision for inspection of the premises by the local police, fire and health authorities, and a requirement that the storage of "any inflammable or combustible matter" thereon shall be immediately reported to the governing body. Respondents' business is within the exemption category. *Pattison & Bowns, Inc.* v. *Township of Saddle River*, 129 N. J. L. 135, affirmed 130 N. J. L. 177. We find these points to be devoid of substance.

The ordinance was enacted in the purported exercise of the power conferred by R. S. 40:52-1(g) and 40:52-2; and these provisions and sec. 54:4-3.20, supra, are mutually exclusive. The former involves to a license or privilege tax or excise levied for both revenue and regulation under the police power, while the latter section has reference to a property tax merely. The levies may coexist, if such be the legislative intention; and this is the case here. Sec. 54:4-3.20 plainly confines the exemption to property taxes, i. e. "personal property stored in a warehouse" of one "engaged in the business of storing goods for hire." [fol. 411] License is a means of regulating and taxing privileges and occupations and the use and disposal of property. The exactions thereby made do not take the category of an ad valorem property tax. License and property taxes cover separate and distinct areas of the local taxing power; and they have radically different attributes. *Jersey City* v. *Martin*, 126 N. J. L. 353. See, also, *Bowman* v. *Continental Oil Co.*, 256 U. S. 642, 41 S. Ct. 606, 65 L. Ed. 1139. The one is a tax upon the business of the warehouse-

man; the other is a direct tax upon the property of third persons stored in the warehouse. And the exercise of the latter power is confined by specific constitutional limitations which do not apply to the former. There is no suggestion of a legislative purpose to render the storage and warehouse business immune from the tax for revenue and regulation permissible under the cited licensing statute. The frame of the statutes is not consistent with the theory of an all-inclusive exemption from taxes of both classes. The contention contra necessarily proceeds upon the hypothesis that, prior to the adoption of the exemption statute, the ad valorem property tax was exclusive of all license taxes and excises; and this proposition is obviously untenable. The argument of competitive disadvantage is one to be addressed to the legislative forum.

But the exercise of the licensing power cannot exceed the bounds of reason. The law will not suffer confiscation and oppression under the guise of taxation. The quantum of the tax rests in sound discretion, guided by reason; and judicial intervention is justifiable only where there has been an abuse of the power. If the local legislative action is not clearly unreasonable or unduly oppressive or discriminatory, its policy is not a justiciable question. *The Great A. & P. Tea Co., Inc.* v. *Camden*, 122 N. J. L. 47; *Giant Tiger Corporation* v. *Camden*, 122 N. J. L. 240; *American Grocery Co.* v. *Board of Commissioners of New Brunswick*, 124 N. J. L. 293; *Durland* v. *Kearney*, 128 N. J. L. 22.

And we are clear that the taxes thus levied do not constitute a direct and undue burden upon and therefore a [fol. 412] regulation of interstate commerce in contravention of Article I, sec. VIII, cl. 3, of the Federal Constitution.

The regulation of foreign and interstate commerce is a subject within the exclusive jurisdiction of the Congress. This control embraces all the instrumentalities by which such commerce may be carried on. And, while a state possesses the power to tax property having a situs within its confines, whether employed in interstate commerce or not, it cannot impose a tax for the privilege of engaging in such commerce. *Helson* v. *Commonwealth of Kentucky*, 279 U. S. 245, 49 S. Ct. 279, 73 L. Ed. 683; *Sprout* v. *South Bend*, 277 U. S. 163, 48 S. Ct. 502, 72 L. Ed. 833; *McCall* v. *People of California*, 136 U. S. 104, 10 S. Ct. 881,

34 L. Ed. 391. But a tax for the privilege of exercising a corporate franchise within the state is not obnoxious to the commerce clause. A tax measured by net profits earned within the state is valid, even though these profits may have been derived in part, or indeed mainly, from interstate commerce. A franchise is deemed a part of the corporate property lawfully taxable in the state. *Underwood Typewriter Co.* v. *Chamberlain*, 254 U. S. 113, 41 S. Ct. 45, 65 L. Ed. 165; *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321, 38 S. Ct. 499, 62 L. Ed. 1135; *Northwestern Mutual Life Ins. Co.* v. *Wisconsin*, 247 U. S. 132, 38 S. Ct. 444, 62 L. Ed. 1025. The tax levy here is not of the proscribed class.

The essential facts are not in dispute. The storage plant, commonly known as "Coalberg," is owned by the Pennsylvania Coal Company, a Pennsylvania corporation. It comprises 67¼ acres of land and buildings, tracks, chutes, hoppers, scales, machinery and equipment. The owner leased the yard in its entirety to Independent Warehouses, Inc., a New York corporation, at the nominal annual rental of one dollar. These Corporations are wholly owned subsidiaries of the Erie Railroad Company, a common carrier in interstate commerce; and under agreements between these parties, the plant is operated by the Pennsylvania Company "for the benefit and on behalf of," and at the sole expense of the Erie Company's trustees, "as a public service facility for shippers of prepared anthracite coal on Erie lines desiring storage space in accordance with and under the rates named in a certain tariff on file with the Interstate Commerce Commission and the Public Utilities Commission of the State of New Jersey, issued January 24, 1939," and any supplements thereto. The Erie's trustees agreed to maintain an agent at the yard authorized on their behalf to issue warehouse receipts for coal placed therein "for storage by shippers." The Penn-[fol. 413] sylvania Company undertook to remit to the trustees, monthly, the net operating surplus; and the trustees assumed the obligation of reimbursement for the net operating loss, if any. By express provision, "taxes" are includable in the "allowable items of expense chargeable against" operation and maintenance. By this arrangement, the Erie's trustees sought to avert the diversion of "shipments of coal * * * to other and competing lines on which facilities for coal storage are available."

The agreement with Independent Warehouses, Inc. recites that it was "the desire and for the interest" of the Pennsylvania Company that the lessee should conduct upon the premises the "general business of a warehouseman," and provides that the lessee shall devote the yard to such purposes, and shall furnish storage therein for "any and all types of coal * * * tendered to it for warehousing for the account or at the request of "the Pennsylvania Company (if there shall be available storage space) at the rate of two cents per ton, with a minimum annual charge of $600. There was also a provision for reimbursement of the lessee for its losses, costs and expenses not classable as "ordinary." By a supplemental agreement, the storage rate was reduced to one-half cent per ton, and the annual minimum charge to $500. The New York, *Susquehanna* and Western Railroad Company has certain contractual trackage rights at the yard, and the use of other facilities. Independent Warehouses, Inc. is engaged in the public warehouse business "at various places in nine states." For some 15 years prior to the agreement with the Pennsylvania Company, Independent had issued warehouse receipts for coal stored in this yard.

The Pennsylvania Company owns and operates anthracite coal mines in the State of Pennsylvania. Coal sold at the mines is, by contract with the purchaser, shipped in interstate commerce over the railroad of the Erie Company, and stored at the Coalburg yard until, at the shipper's direction, it is again conveyed by rail to its ultimate destination. For the intransit storage, including unloading, reloading, and the incidental services, the shipper pays to the carrier a tariff charge of 28¢ per ton. Free Storage is permissible for as long as two years. This storage is designed to meet seasonal deficiencies and shortages due to the excess of consumption over production, and to facilitate the financing of purchases through negotiable warehouse receipts, all of which, it is said, advance the general welfare as well as serve the particular interests of the mine operators, shippers and carriers. Erie's Coal [fol. 414] Freight Agent testified that, when because of seasonal conditions the supply exceeds the demand, "the operators bill" coal "to storage, to store it at an advantageous point for reshipment," that "the shipper *hasn't* enough orders to ship it out directly to destination;" that all the coal "is consigned to Coalburg, Rochelle Park, for

storage; billed at the regular tariff rates from the mine to the storage plant," and "it is held there awaiting orders from the consignee as to what is to happen to it." This course "relieves the car situtation," and it "also helps the operator to continue operating."

There is an established tariff charge for the storage; and the argument, in brief, is that through the "contract agencies" of the Pennsylvania Company, as owner of the plant, and Independent, as "a public warehouseman," the Erie Company "utilizes" this facility "solely to provide regular tariff in-transit services to its shippers for interstate shipments of coal from the Pennsylvania mines to ultimate destinations through, and beyond, Coalburg, with the facilities provided by the storage of the coal with a public warehouseman, as a regular transportation service facility over its line, pursuant to the demands of shippers;" and that the "tariff charges for this in-transit service are collected by the carriers directly from the shippers, and Erie, and participating carriers, bear the entire expense of the transit facilities."

But the coal is shipped to the purchaser or his consignee at Coalburg, Rochelle Park, and freight charges collected at the rate prescribed for transportation from the mines to that particular point, plus storage and unloading charges; and, when the coal is reshipped, there is, as we have seen, a new billing to the ultimate destination at the through interstate rate from the point or origin to the new destination, plus reloading charges, as a continuance of the original interstate movement," and the balance is paid by the shipper at Coalburg. The ultimate destination is not determined until the owner gives shipping instructions. Compare *Federal Compress & W. Co.* v. *McLean*, 291 U. S. 17, 54 S. Ct. 267, 78 L. Ed. 622.

Thus, the continuity of the carriage in interstate com- [fol. 415] merce is broken when the carried commodity is unloaded and stored at Coalburg for an indefinite period, subject to the owner's disposal, and thereby the coal becomes intermingled with the general mass of property having a situs within the State, and subject to the State's dominion and liable to taxation as such; and the stored coal retains that character and status until it is again shipped in interstate commerce. It does not become the subject of carriage in interstate commerce by reason of its con-

veyance by rail from Coalberg to other points in New Jersey.

The inquiry is whether the regulation lays an unconstitutional burden on interstate commerce, or a tax upon an independent local service, preliminary or subsequent to any interstate transportation. *People of New York, ex rel. Pennsylvania Railroad Co.* v. *Knight*, 102 U. S. 21, 24 S. Ct. 202, 48 L. Ed. 325; *McGoldrick* v. *Berwind-White Coal Min. Co.*, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565. The question of times is one of remoteness and degree. The tax may be too remote and incidental to constitute a burden on the transaction of the commerce between the states. *Henderson Bridge Co.* v. *Kentucky*, 166 U. S. 150, 17 S. Ct. 532, 41 L. Ed. 953. A tax that only indirectly affects the profits or returns from interstate commerce is not within the ban of the commerce clause. *United States Glue Co.* v. *Oak Creek, Supra.*

Property actually in transit in interstate commerce is exempt from local taxation. But if property be stored "for an indefinite time during such transit, at least for other than natural causes or lack of facilities for immediate transportation, it may be lawfully assessed by the local authorities." *Kelley* v. *Rhoads*, 188 U. S. 1, 23 S. Ct. 259, 47 L. Ed. 359. There, Mr. Justice Brown found that the earlier cases declared the principle to be that "while the property is at rest for an indefinite time awaiting transportation, or awaiting a sale at its place of destination or at an intermediate point, it is subject to taxation. But if it be actually in transit to another state, it becomes the subject of interstate commerce, and is exempt from local assessment." If there was a cessation of interstate commerce, the goods became subject to the jurisdiction of the state of their situs. Actual transit is the determinant. Here, movement in interstate commerce had ceased when the storage for an indefinite period began; and the coal then came within the [fol. 416] dominion and protection of the state. As in the case of *Susquehanna Coal Co.* v. *South Amboy*, 76 N. J. L. 412, affirmed 77 N. J. L. 796, there was something more than an incidental interruption of the continuity of the transportation through the state. On a bill in equity to restrain the collection of taxes levied in that case, the Federal Supreme Court expounded the principle that, even though the delay in interstate transportation was but temporary, if it was availed of for "a business purpose and

advantage," the commodity during that particular period "secured the protection of the state," and it was therefore subject to local taxation. *Susquehanna Coal Co.* v. *South Amboy*, 228 U. S. 665, 35 S. Ct. 712, 57 L. Ed. 1015.

The case of *Lehigh and Wilkes-Barre Coal Co.* v. *Junction*, 75 N. J. L. 68, affirmed Ibid, 922, is to the same effect. It does not matter that there the goods were owned by the carrier. That does not serve to vary the application of the principle. The determinative question is whether there was a cessation of interstate commerce when the goods were placed in storage at Coalberg for an indefinite period of time; and here it must be resolved in the affirmative. To borrow the language of Mr. Justice McKenna in the case of *General Oil Co.* v. *Crain*, 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754, the coal "required storage there,—the maintenance of the means of storage; of putting it in and taking it from storage." See, also, *State, Detwold and Cox, Pros.*, v. *Engle*, 34 N. J. L. 425; *State, Lehigh & W. Coal Co., Pros.*, v. *Carrigan*, 39 N. J. L. 35.

It is also urged that the Erie Company "and its agents" conduct "a common carrier public service facility for the transportation and in-transit storage of coal at Coalberg, under franchises and authority conferred" by the State of New Jersey, and it therefore cannot be required "to obtain a municipal license for the privilege of exercising its franchise."

Obviously, the franchise grant to the railroad company does not render immune from regulation and taxation under sec. 40:52-1(g) and 40:52-2, *supra*, a public warehouse business conducted by another, even though the operator be one of its corporate subsidiaries. The question is essentially [fol. 417] one of legislative intention; and there is no indication whatever of a purpose to exempt a public warehouse of this catgory from the operation of the cited statute, simply because the railroad company uses the facility for what it terms in transit storage after the movement in commerce has come to an end.

And we perceive no force to the contention that the license fee is arbitrary, unreasonable and prohibitory, and repugnant to Federal and State constitutional guaranties, in that (1) the license fee is measured on a square foot basis "without relation to volume of business conducted, tons of coal in storage, or gross net earnings of the opera-

tion;" (2) the fee is fixed "without relation to the value of the privilege of conducting the business," and is exorbitant; and (3) the fee is in *quantum* such as will "prevent the conduct of this interstate business within the municipality."

A tax on a public warehouse graduated according to storage capacity is familiar legislative practice. *Vide Federal Compress & W. Co.* v. *McLean, supra.* The license has reference only to the public warehouse business transacted at the warehouseman's established place of business within the State. *W. W. Cargill Co.* v. *Minnesota,* 180 U. S. 452, 21 S. Ct. 423, 45 L. Ed. 619. And under the ordinance in the case at hand, the warehouse corporation may protect itself against the inclusion of areas not devoted to storage in the calculation of the tax. There is a presumption that the tax is reasonable in amount; and the burden rests upon the challenger to overthrow that presumption. It has not been sustained here. There is not such disparity between the "value of the privilege" and the levy as would render the ordinance arbitrary and discriminatory. The parties are in disagreement as to the *quantum* of the tax upon the stored coal per ton. Based upon respondents' estimate of total plant area and capacity, the tax per ton would amount to 2-1/4¢, while the personal property tax would range between 29¢ and 58¢ per ton. From 1903 to 1940, when tax exemption was claimed under sec. 54:4-3.20, the plant was successfully managed notwithstanding that property taxes were paid on the stored coal in an amount not less than the current license tax.

And there is no merit in the contention that the municipality does not possess power under the cited [fol. 418] enabling act "to penalize an employee because his employer fails to comply with a licensing ordinance," and therefore the conviction of the individual respondent, Thompson, cannot be sustained.

Under the ordinance, no person, firm or corporation may "work in, occupy, or, directly or indirectly, in any manner whatsoever, utilize any place or premises" in which the storage business is conducted without the license therein prescribed. This is the offense of which Thompson was convicted. It was within the competency of the local legislative body to render this a punishable offense, essential to the enforcement of the policy of the ordinance; the power is an integral part of the general grant of authority

to license and regulate contained in sec. 40:52-1(g) and 40:52-2, supra.

Lastly, it is said that the ordinance imposes excessive fines and penalties in contravention of Article I, par. 15, of the State Constitution.

The penalty prescribed for a violation of the ordinance is imprisonment for a term not exceeding 90 days, or a fine not exceeding $200, or both, with an additional provision that each day during which a violation "shall continue shall constitute a separate offense;" that the magistrate may, in his discretion, imprison one so convicted for a term not exceeding 90 days, "in default of the payment of any fine;" and that execution may issue against goods and chattels to recover an unpaid fine.

We are not called upon to determine the validity of all these sanctions. A fine of $200 was the penalty imposed upon each of the convicted respondents, Independent Warehouses, Inc. and Thompson; and a fine in this amount coupled with imprisonment for 90 days cannot reasonably be deemed excessive in constitutional intendment. Vide R. S. 40:49-5. The ordinance contains a provision that in case "any section or part" thereof shall be held illegal or unconstitutional, such invalidity "shall not be construed as impairing the force and effect of the remainder of the ordinance." If it be conceded *arguendo* that the cumulative penalty clause is invalid in whole or in part, the remainder of the provision for sanctions is severable and would stand unaffected.

[fols. 419-420] The judgments of the Supreme Court are accordingly reversed, and the judgments of conviction are affirmed.

[File endorsement omitted.]

[fol. 421] IN NEW JERSEY COURT OF ERRORS AND APPEALS

INDEPENDENT WAREHOUSES, INC., a corporation of the State of New York, and Pennsylvania Coal Company, a corporation of the Commonwealth of Pennsylvania, and Erie Railroad Company, a corporation of the State of New York, intervening parties, Prosecutors-Appellees,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a municipal corporation of the State of New Jersey, Defendants-Appellants.

ORDER OF REVERSAL AND REMITTITUR TO SUPREME COURT—
Filed March 7, 1946

This case coming on to be heard at the October term, 1945, in the presence of counsel for the respective parties, and the case having been read, and the argument of counsel, as well as the record and proceedings duly considered upon the appeal set forth and specified in the grounds of appeal;

It is thereupon on this 31st day of January, 1946, ordered and adjudged that the judgment of the Supreme Court be and the same is hereby reversed and the judgment of conviction be and the same is hereby affirmed, and it is further ordered that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said Court.

On Motion of Chandless, Weller & Kramer, Attorneys of Defendants-Appellants.

[fol. 422] [File endorsement omitted.]

[fol. 423] IN NEW JERSEY COURT OF ERRORS AND APPEALS

JAMES THOMPSON, Prosecutor-Appellee,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Defendants-Appellants

ORDER OF REVERSAL AND REMITTITUR TO SUPREME COURT—Filed March 7, 1946

This case coming on to be heard at the October term, 1945, in the presence of counsel for the respective parties, and the case having been read, and the argument of counsel, as well as the record and proceedings duly considered upon the appeal set forth and specified in the grounds of appeal;

It is thereupon on this 31st day of January, 1946, ordered and adjudged that the judgment of the Supreme Court be and the same is hereby reversed and the judgment of conviction be and the same is hereby affirmed, and it is further ordered that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On Motion of Chandless, Weller & Kramer, Attorneys of Defendants-Appellants.

[fol. 424] [File endorsement omitted.]

[fol. 425] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed March 13, 1946

The above named petitioners-appellants, feeling themselves aggrieved by the final judgments of the New Jersey Court of Errors and Appeals entered on March 7th, 1946, in the above causes respectfully show:

I. Petitioners are the Appellants in the above entitled causes.

2. On November 30, 1943, Petitioners, Independent Warehouses, Inc., (hereinafter called "Independent"), and James Thompson were convicted, and each fined $200., before the Appellee, William Scheele, Recorder of Saddle River Township, for violation of a municipal ordinance adopted January 25, 1943, by the Appellee, Township of Saddle River, entitled:

> "An ordinance to regulate and license the business of the storage of personal property in warehouses engaged in the business of storing goods for hire and the place or premises in or at which said business is conducted and carried on, to prescribe fees for such licenses, and to provide penalties for the violation of this ordinance,"

[fol. 426] which is fully set forth in the statement of jurisdiction filed herewith.

3. By order of the New Jersey Supreme Court, entered December 14, 1943, petitioners, Pennsylvania Coal Company (hereinafter called the "Coal Company"), and Erie Railroad Company (hereinafter called "Erie") were made parties to the first above entitled action on the side of the prosecutor (Independent), and their names were ordered to be added to the writ of certiorari allowed on December 13, 1943 to Independent.

4. On review of said convictions on writs of certiorari, issued out of the New Jersey Supreme Court on December 13, 1943, said ordinance was declared invalid by said court as applied to the business, place and premises, circumstances and parties involved in said convictions, and said convictions were reversed and set aside, on an opinion filed January 19, 1945, and judgments of reversal were entered in that court on January 29, 1945.

5. On appeal from the judgments of said New Jersey Supreme Court to the New Jersey Court of Errors and Appeals, the latter court, on an opinion filed January 31, 1946, reversed the judgments of the New Jersey Supreme Court and affirmed the convictions aforesaid. Orders of reversal were entered on March 7th, 1946.

6. Before said Recorder, and before the New Jersey Supreme Court and the New Jersey Court of Errors and

Appeals, the above entitled causes were jointly tried, briefed and argued, by stipulation of the parties and the approval of, and were decided in joint opinions on one joint record in each of said courts, respectively.

7. The statement of jurisdiction filed herewith pursuant to Rules 12 and 46 of the Rules of the Supreme Court of the United States, shows that, and particularly set forth [fol. 427] the manner in which, in the proceedings in the above entitled causes, there was drawn in question the validity of a statute of the State of New Jersey, to wit, said municipal ordinance, on the ground of its being repugnant to certain provisions of the Constitution and laws of the United States therein specified, and that the decision of the New Jersey Court of Errors and Appeals was in favor of its validity.

8. The New Jersey Court of Errors and Appeals is the highest court of New Jersey in which a decision in these suits can be had.

9. In said causes there is drawn in question the validity of a municipal ordinance, and convictions thereunder, on the ground that said ordinance is repugnant to the constitution and laws of the United States, and the decision of the New Jersey Court of Errors and Appeals is in favor of its validity, notwithstanding your petitioners' contention that said ordinance, and the convictions thereunder, violate the Fourteenth Amendment and Article I, Section VIII, clause 3, of the Constitution of the United States, and certain laws of the United States specified in the Statement of Jurisdiction filed herewith.

10. Wherefore, in accordance with section 237(a) of the Judicial Code (28 U. S. C. A. Sec. 344), and in compliance with the Rules of Supreme Court of the United States, your petitioners respectfully show that these cases are such in which, under the legislation in force when the Act of January 31, 1928 was passed, to wit, under Section 237(a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

11. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the [fol. 428] assignment of errors filed herewith pursuant to

Rules 9 and 46 of the Rules of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

12. Wherefore, your petitioners pray for the allowance of an appeal from the said New Jersey Court of Errors and Appeals, the highest court in the State of New Jersey in which a decision in these causes can be had, to the Supreme Court of the United States, in order that the decision and final judgments of said New Jersey Court of Errors and Appeals may be examined and reversed, and petitioners also pray that a transcript of the record, proceedings and papers in these causes, duly authenticated by the Clerk of said New Jersey Court of Errors and Appeals, under his hand and the seal of said court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of petitioners and that the cost and supersedeas bond, or bonds, tendered by petitioners be approved, and that said appeal may operate as a supersedeas.

Dated: March 13, 1946.

Clement K. Corbin, Attorney for Petitioners, Independent Warehouses, Inc., and James Thompson.

Willis T. Pierson, Duane E. Minard, Attorneys for Petitioners, Pennsylvania Coal Company, and Erie Railroad Company.

[fol. 429] [File endorsement omitted.]

[fol. 430] SUPREME COURT OF THE UNITED STATES

INDEPENDENT WAREHOUSES, INC., and PENNSYLVANIA COAL COMPANY and Erie Railroad Company, intervening parties, Appellants,

vs.

WILLIAM SCHEELE, Recorder of the Township of Saddle River, and the Township of Saddle River, a Municipal Corporation of the State of New Jersey, Appellees

JAMES THOMPSON, Appellant,

vs.

SAME, Appellees

On Appeal from the New Jersey Court of Errors and Appeals

ORDER ALLOWING APPEAL—Filed March 13, 1946

On petition of appellants in the above entitled causes, for an appeal to the Supreme Court of the United States from Judgments of the New Jersey Court of Errors and Appeals, having been duly presented and filed, accompanied by an assignment of errors and a statement as to the jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in these causes having been considered, it is hereby

Ordered that an appeal be, and it is hereby, allowed to the Supreme Court of the United States from the final judgments dated March 7th, 1946 of the New Jersey Court of Errors and Appeals as prayed in said petition, and the Clerk of the New Jersey Court of Errors and Appeals shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said New Jersey Court of Errors and [fol. 431] Appeals, a true copy of the material parts of the record herein, which shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that appellants in each of the above entitled causes, shall give a good and sufficient cost and supersedeas bond in the sum of Fifteen hundred dollars

($1500.00) conditioned that said appellants, respectively, shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, and that said bonds, when filed and approved, shall stay, the sending down of the remittiturs or mandates herein and all proceedings in these causes until the final disposition of these causes by the Supreme Court of the United States.

Dated: March 13, 1946.

Luther A. Campbell, Chancellor, and Presiding Judge of the New Jersey Court of Errors and Appeals.

[fol. 432] [File endorsement omitted.]

[fols. 433-451] Supersedeas bonds on appeal for $1,500.00 approved and filed March 13, 1946, omitted in printing.

[fol. 452] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 13, 1946

Appellants assign the following errors in the records and proceedings in these causes:

The New Jersey Court of Errors and Appeals erred:

1. In reversing the judgment of the New Jersey Supreme Court, and in affirming the judgments of conviction of appellants, Independent Warehouses, Inc., and James Thompson, by William Scheele, Recorder of the Township of Saddle River:

2. In holding that the ordinance adopted January 25, 1943, by the Township of Saddle River, entitled:

> "An Ordinance to Regulate and License the Business of the Storage of Personal Property in Warehouses Engaged in the Business of Storing Goods for Hire and the Place or Premises in or at Which Said Business Is Conducted and Carried On, to Prescribe Fees for Such Licenses, and to Provide Penalties for the Violation of This Ordinance,"

as applied to the business, property, facilities, services and occupations of appellants, is not repugnant to the Commerce Clause (Article I, Section VIII, Clause 3) of the Constitution of the United States, and some, or all, of the [fol. 453] following provisions of the Interstate Commerce Act as amended (Title 49 of United States Code; 49 U. S. C. A.): Section 1, paragraph (1) and clause (a) thereof; paragraphs (2), (3), (4), (5) and (6); and Section 6, paragraphs (1), (3), (4), (5), (6), (7) and (10); by—

(a) Imposing an unlawful license fee, or excise, or other local, tax for, and as a condition precedent to the right to exercise, the privilege of engaging in interstate commerce;

(b) Imposing an unlawful license fee or tax on the privilege of using and operating transportation instrumentalities, facilities and services, and upon property, instrumentalities and facilities employed exclusively, in interstate commerce;

(c) Imposing undue and unlawful taxes, regulations and burdens upon interstate commerce; and in holding that

(d) Said ordinance did not impose an unlawful additional tax upon the property and facilities used as an instrument of interstate commerce, or upon the coal in storage in lieu of personal property taxes thereto, (*Op. p. 2);

(e) The taxes levied by said ordinance "do not constitute a direct and undue burden upon and therefore a regulation of interstate commerce in contravention of Article I, sec. VIII, cl. 3 of the Federal Constitution" and are not proscribed thereby (Op. p. 4);

(f) "the continuity of the carriage in interstate commerce is broken when the carried commodity is unloaded and stored at Coalberg for an indefinite period, subject to the owners disposal, and thereby the coal becomes intermingled with the general mass of property having a situs [fol. 454] within the state, and subject to the state's dominion and liable to taxation as such; and the stored coal retains that character and status until it is again

(*"Op. p. —" refers to the typewritten opinion of the New Jersey Court of Errors and Appeals attached to the Statement of Jurisdiction filed herewith, and not yet printed.)

shipped in interstate commerce. It does not become the subject of carriage in interstate commerce by reason of its conveyance by rail from Coalberg to other points in New Jersey" (Op. pp. 7-8).

(g) "A tax that only indirectly affects the profits or returns from interstate commerce is not within the ban of the commerce clause" (Op. p. 8).

(h) "* * * if property be stored 'for an indefinite time during transit, at least for other than natural causes or lack of facilities for immediate transportation, it may be lawfully assessed by the local authorities'" (Op. p. 8).

(i) "Here movement in interstate commerce had ceased when the storage for an indefinite period began; and the coal then became within the dominion and protection of the state" (Op. pp. 8-9).

(j) "A public warehouse business conducted by another" as agent of a railroad company "does not render" "the franchise grant to the railroad company immune from regulation and taxation under sec. 40:52-1(g) and 40:52-2" of New Jersey Revised Statutes (Op. pp. 9-10), and that said statutes do not "exempt a public warehouse of this category from the operation of the cited statute, simply because the railroad company uses the facility for what it terms intransit storage after the movement in commerce has come to an end." (Op. p. 10).

3. In holding that said ordinance, as applied to appellants and their business, property, facilities, services and employments, does not abridge, or violate, the rights of appellants, or any of them, guaranteed by, and is not repugnant to, the Fourteenth Amendment of the Constitution of the United States by—

(a) Depriving them of their property without due process of law for the reason that the license fee prescribed by the ordinance is arbitrary, unreasonable, prohibitory, and confiscatory.

[fol. 455] (b) Denying to them the equal protection of the laws for the reason that the ordinance in effect provides for a license, and a tax, upon the business and property of

the prosecutors, which is arbitrary, excessive and discriminatory.

(c) Denying to them, and abridging, their privileges and immunities as citizens of the United States in that, said ordinance, in effect, arbitrarily prevents them from carrying on their lawful business of storing coal in transit in interstate commerce.

(d) Imposing a license fee, under the exercise of the police power, in an amount in excess of the reasonable expenses of issuing the license, and administering and enforcing its provisions.

(e) Exposing them to, or imposing, unreasonable and excessive penalties and punishments, constituting a denial of equal protection of the laws for the reason that the ordinance prescribes, as a penalty for the violation thereof, imprisonment for a term not exceeding ninety days, or to a fine not exceeding $200.00, or both, for each day that a violation of any of the terms or provisions of the ordinance shall continue, and in holding that;

(f) The constitutional limitations governing an *ad valorem* property tax do not apply to a license tax (Op. p. 3).

(g) "* * * we perceive no force to the contention that the license fee is arbitrary, unreasonable and prohibitory, and repugnant to the Federal * * * constitutional guaranties, in that (1) the license fee is measured on a square foot basis 'without relation to volume of business conducted, tone of coal in storage, or gross or net earnings of the operation'; (2) the fee is fixed 'without relation to the value of the privilege of conducting the business,' and is exhorbitant; and (3) the fee is in *quantum* such as will 'prevent the conduct of this interstate business within the municipality'. (Op. p. 10).

[fol. 456] (h) "There is not such disparity between the 'value of the privilege' and the levy as would render the ordinance arbitrary and discriminatory" (Op. p. 10).

(i) "* * * there is no merit in the contention that the municipality does not possess power under the cited

enabling act 'to penalize an employee because his employer fails to comply with a licensing ordinance' * * *" (Op. p. 11).

(j) "It was within the competency of the local legislative body to render this a punishable offense, essential to the enforcement of the policy of the ordinance; the power is an integral part of the general grant of authority to license and regulate contained in sec. 40:52-1, 40:52-1 (g) and 40-52-2" of New Jersey Revised Statutes (Op. p. 11).

4. In failing and refusing to hold that said ordinance is void because—

(a) It is indefinite and uncertain in the amount of the *amount of the* license fee intended to be exacted;

(b) It unlawfully vests in the municipal officials the arbitrary power and discretion to determine the adequacy of the license fee presented with the license application and reject the application;

(c) It unlawfully vests in the municipal officials the arbitrary power and discretion to revoke any license granted by them, without prescribing definite, or any, rules, regulations and conditions for the guidance of such officials in the execution of such powers and discretion;

In those respects the ordinance, denies to appellants due process of law and equal protection of laws, in violation of the Fourteenth Amendment of the Constitution of the United States.

5. In failing and refusing to decide the question whether, and in not deciding that, the ordinance exposed appellants to, or imposed upon them, unreasonable and excessive penalties and punishments, for the reason that the ordinance denied to them the equal protection of the laws in violation of the Fourteenth Amendment of the United States (Op. pp. 11-12).

[fols. 457-459] Wherefore, on account of the errors hereinabove assigned, appellants pray that said judgments of the New Jersey Court of Errors and Appeals, dated March

7th 1946, in the above entitled causes, be reversed, and judgments entered in favor of these appellants.

Clement K. Corbin, Attorney for Appellants, Independent Warehouses, Inc. and James Thompson.
Willis T. Pierson, Duane E. Minard, Attorneys for Appellants, Pennsylvania Coal Company and Erie Railroad Company.

Dated: March 13, 1946.

[fols. 460-461] Citation in usual form showing service on Chandless, Weller & Kramer, omitted in printing.

[fol. 462] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 15, 1946

To the Clerk of the New Jersey Court of Errors and Appeals:

SIR:

Take Notice that you are requested to include in the transcript in the above entitled cause to be filed with the Supreme Court of the United States, the following papers:

1. The State of Case filed with the New Jersey Court of Errors and Appeals.
2. The opinion of the New Jersey Court of Errors and Appeals filed January 31, 1946.
3. The judgments of the New Jersey Court of Errors and Appeals, namely Rules for Reversal and Remittitur entered March 7th, 1946.
4. The Petition for Appeal to the Supreme Court of the United States.
5. The Order Allowing Appeal to the Supreme Court of the United States.

[fol. 463] 6. Appeal Bonds.
7. Statement of Jurisdiction.
8. Assignment of Errors.
9. Citation on Appeal.

10. Proof of service of Petition for Allowance of Appeal, Order Allowing Appeal, Statement of Jurisdiction, Assignment of Errors and Citation.

11. Praecipe with acknowledgment of service endorsed thereon.

12. Certificate of Return of the Clerk of the New Jersey Court of Errors and Appeals.

Respectfully yours, Clement K. Corbin, Attorney for Appellants, Independent Warehouses, Inc., and James Thompson. Willis T. Pierson and Duane E. Minard, Attorneys for Appellants, Pennsylvania Coal Company and Erie Railroad Company.

Dated: March 13, 1946.

Service of a copy of the foregoing Praecipe is hereby acknowledged the 14th day of March, 1946.

Chandless, Weller & Kramer, By Ralph W. Chandless, Attorney for Appellees.

[fol. 464] [File endorsement omitted.]

[fol. 465] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 466] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON—Filed April 11, 1946

Appellants state the following points on which they intend to rely:

I. The ordinance requires the obtaining of a license and the prepayment of a license fee as a condition precedent to the right of Appellants, or some of them, to conduct an instrument of transportation service in interstate commerce, and imposes taxes, regulations, instructions, and burdens upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States and the Interstate Commerce Act.

II. The Township of Saddle River had no authority to require a license, and impose a license fee, for the privilege of conducting the transportation facility at the Coalberg property.

III. The license fee prescribed by the ordinance is arbitrary, unreasonable, discriminatory, and prohibitory, and (2) deprives appellants, and each of them, of their [fol. 467] property without due process of law; (b) denies to them equal protection of the laws; and (c) denies to them their privileges and immunities as citizens of the United States, in violation of the Fourteenth Amendment of the Constitution of the United States.

IV. The ordinance is an arbitrary and discriminatory device to tax, and obtain public revenue from appellants, or some of them, in lieu of personal property taxes upon coal, stored at the Coalberg storage plant, which is exempt from taxation, and thereby deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

V. The ordinance is indefinite, uncertain, arbitrary, unreasonable and unlawful, (a) as to the amount of the license fee, (b) as to the discretionary powers it purports to confer upon the members of municipal governing body, and its officers and agents, and thereby denies to appellants the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States.

VI. The ordinance exposes appellants to, and imposes, excessive fines and penalties and thereby denies to Appellants due process of law and the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States.

Dated March 13, 1946.

Clement K. Corbin, Attorney for Appellants, Independent Warehouses, Inc., and James Thompson. Willis T. Pierson, Duane E. Minard, Attorneys for Appellants, Pennsylvania Coal Company and Erie Railroad Company.

[fol. 468] Service hereof acknowledged this 4th day of April, 1946.

Harry Cane, Attorney for Appellees.

[fol. 469] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF RECORD—Filed April 11, 1946

Appellants designate the following parts of the record, certified to the Supreme Court of the United States by the Clerk of the New Jersey Court of Errors and Appeals, which they consider *unnecessary* for the consideration of this appeal ("Printed Record Page" references herein relate to the printed "State of Case," in the New Jersey Court of Errors and Appeals):

Part of Record to be omitted:	Printed Record page
Exhibit P-11 (letter Dec. 8, 1941)	71–78
Exhibit D-2 (Map) opposite	82
Exhibit D-3 (Map) opposite	82
Exhibit D-4 (pleadings and proceedings in U. S. D. C., Dist. of N. J. Civil Action No. 2861)	84–123
Correspondence between counsel, from line 30 on	132)
to and including line 20 on	141)
[fol. 470] Colloquy of Counsel from line 20 on	141)
to and including end of	148)
Chandless draft of stipulation	149–151
Hobart, Minard & Cooper draft of stipulation	152–154

Dated: March 13, 1946.

Clement K. Corbin, Attorney for Appellants, Independent Warehouses, Inc., and James Thompson. Willis T. Pierson, Duane E. Minard, Attorneys for Appellants, Pennsylvania Coal Company and Erie Railroad Company.

Service hereof acknowledged this 4th day of April, 1946.
Harry Cane, Attorney for Appellees.

[fol. 471] [File endorsement omitted.]

[fol. 472] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—May 27, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdic-

tion is noted and the case is transferred to the summary docket.

Mr. Justice Jackson took no part in the consideration or decision of this question.

Endorsed on cover: File No. 50,799, New Jersey, Court of Errors and Appeals, Term No. 83. Independent Warehouses, Inc., Pennsylvania Coal Company, Erie Railroad Company and James Thompson, Appellants, vs. William Scheele, Recorder of the Township of Saddle River, and the Township of Saddle River. Filed April 11, 1946. Term No. 83 O. T. 1946.